

**A. 26**

1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI  
2 UNITED STATES BANKRUPTCY COURT  
3 SOUTHERN DISTRICT OF NEW YORK  
4 - - - - -

5 In Re:

Chapter 11

6  
7 LEHMAN BROTHERS Case No. 08-13555(JMP)  
HOLDINGS, INC. et al., (Jointly Administered)  
8  
9 Debtors.  
10 - - - - -

11 HIGHLY CONFIDENTIAL  
12 DEPOSITION OF PAOLO TONUCCI  
13 Friday 14 August 2009  
14 At: 7:00 am  
15 Taken at:  
16 Jones Day  
21 Tudor Street  
17 London  
United Kingdom

18  
19 Reported by: AILSA WILLIAMS  
Certified LiveNote Reporter  
20  
21  
22  
23  
24  
25

2 (Pages 2 to 5)

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<p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 6</p> <p>2 Schiller &amp; Flexner representing Barclays.</p> <p>3 MR. TAMBE: Erica, can you hear us?</p> <p>4 MS TAGGART: Yes, thank you.</p> <p>5 MR. TAMBE: Morning, Mr. Tonucci. By</p> <p>6 whom are you currently employed?</p> <p>7 A. Barclays.</p> <p>8 Q. In what capacity?</p> <p>9 A. I work in the treasury area</p> <p>10 Q. What is your position?</p> <p>11 A. Head of group balance sheet</p> <p>12 Q. And is that head of group balance sheet</p> <p>13 for global operations?</p> <p>14 A. That is right, for global operations.</p> <p>15 Q. How long have you held that position?</p> <p>16 A. Since February of this year</p> <p>17 Q. How long have you been employed by</p> <p>18 Barclays?</p> <p>19 A. Since September, 26 September 2008.</p> <p>20 Q. What was your position at Barclays when</p> <p>21 you first joined Barclays in September 2008?</p> <p>22 A. US treasurer for Barclays Capital.</p> <p>23 Q. If you could describe for us briefly</p> <p>24 what your duties have been since you joined</p> <p>25 Barclays, both as US treasurer and now as global</p>	<p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 7</p> <p>2 treasurer?</p> <p>3 A. I am not the global treasurer.</p> <p>4 Q. Okay.</p> <p>5 A. Head of global balance sheet. The US</p> <p>6 treasurer role was focused on liquidity and</p> <p>7 capital management for the US Barclays Capital</p> <p>8 operations and the role with group treasury, the</p> <p>9 global balance sheet role is responsible for</p> <p>10 funding and hedging for the group's balance sheet</p> <p>11 globally.</p> <p>12 Q. Before joining Barclays</p> <p>13 in September 2008 you were employed by Lehman</p> <p>14 Brothers, correct?</p> <p>15 A. That is correct</p> <p>16 Q. And what Lehman Brothers entities were</p> <p>17 you employed by?</p> <p>18 A. LBHI and LBI.</p> <p>19 Q. Collectively for the Lehman entities</p> <p>20 when did you first begin working for the Lehman</p> <p>21 entities?</p> <p>22 A. December 1996.</p> <p>23 Q. If you can give us a brief overview of</p> <p>24 your career at Lehman, the positions you held, the</p> <p>25 time periods that you held them for?</p>
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<p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 8</p> <p>2 A. Yes I joined Lehman as head of or</p> <p>3 manager for the fixed income derivatives product</p> <p>4 control team from 96 to 98.</p> <p>5 From 98 to 2000 I was manager of fixed income</p> <p>6 liquid markets product control.</p> <p>7 From 2000 to 2002 I was head of asset and</p> <p>8 liability management for Europe within the treasury area.</p> <p>9 From 2002 until 2005 I was head of assets and</p> <p>10 liability management for the group globally in New York.</p> <p>11 From 2005, or in 2005 I was international treasurer and then</p> <p>12 also through 2005 to 2000 onwards I was global treasurer.</p> <p>13 Q. And in your capacity as global treasurer</p> <p>14 for the Lehman entities, could you briefly</p> <p>15 describe what your duties were?</p> <p>16 A. Responsible for funding liquidity and</p> <p>17 capital management for the group.</p> <p>18 Q. And to whom did you directly report in</p> <p>19 that capacity?</p> <p>20 A. To the CFO.</p> <p>21 Q. In the time period, say, in 2008, who</p> <p>22 were your direct reports at Lehman?</p> <p>23 A. Most recently in 2008, Robert Azerad,</p> <p>24 Dan Fleming, Janet Birney.</p> <p>25 Q. The last name?</p>	<p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 9</p> <p>2 A. B-I-R-N-E-Y. Julie Boyle, B-O-Y-L-E</p> <p>3 Jackie F-R-O-M-M-E-R and Kevin Thatcher.</p> <p>4 Q. Mr. Azerad, what was his position and</p> <p>5 role at Lehman?</p> <p>6 A. He was responsible for liquidity</p> <p>7 management.</p> <p>8 Q. And Mr. Fleming?</p> <p>9 A. For cash management</p> <p>10 Q. And when you use the phrase "liquidity</p> <p>11 management", what do you mean by that?</p> <p>12 A. I mean for the tracking, reporting, and</p> <p>13 execution of liquidity oversight.</p> <p>14 Q. Does liquidity management include</p> <p>15 arranging for repurchase agreements and other</p> <p>16 forms of financing for the Lehman entities?</p> <p>17 A. Generally not.</p> <p>18 Q. Who within Lehman would have been</p> <p>19 responsible for repurchase agreements and</p> <p>20 liquidity, financing of that nature?</p> <p>21 A. Secured financing was managed within the</p> <p>22 prime brokerage team and overseen by John Coghlan.</p> <p>23 Q. And John was not one of your direct</p> <p>24 reports, is that correct?</p> <p>25 A. He was not, no.</p>

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1	HIGHLY CONFIDENTIAL - PAOLO TONUCCI 10	1	HIGHLY CONFIDENTIAL - PAOLO TONUCCI 11
2	<b>Q. Was he in the line of reporting in your</b>	2	<b>Q. As overseeing liquidity management at</b>
3	<b>department?</b>	3	<b>Lehman, you were responsible for figuring out how</b>
4	A. No, he was not, he was within the prime	4	<b>much cash Lehman needed on a daily basis just to</b>
5	brokerage business	5	<b>run operations, correct?</b>
6	<b>Q. I guess I am trying to understand this</b>	6	A How much cash we needed, how much cash
7	<b>better. Repurchase agreements and financing</b>	7	we had.
8	<b>secured by repurchase agreements is part of</b>	8	<b>Q. Once you figured out how much cash you</b>
9	<b>liquidity of the firm, correct?</b>	9	<b>needed, how much cash you had, you would have to</b>
10	A. It is.	10	<b>tell the secured funding team how much cash they</b>
11	<b>Q. And your responsibility included</b>	11	<b>needed to raise overnight, correct?</b>
12	<b>liquidity management, correct?</b>	12	A The execution of transactions was within
13	A. It did.	13	that team We would within Dan Fleming's area
14	<b>Q. Could you describe for me how your role</b>	14	advise them of the broad requirements, because we
15	<b>and Mr. Coghlan's role were related to each other?</b>	15	were tracking the cash in the cash accounts, and
16	A. Certainly. Any activity that was	16	had the most accurate within the group forecasts
17	performed by the secured funding team would affect	17	of what the cash position was, so there was that
18	our liquidity and would be a component of the	18	interaction.
19	resulting liquidity We would therefore work	19	<b>Q. If I am --</b>
20	closely with that team to understand their	20	A. But to be clear we were not directing
21	activities but, you know, to collectively I guess	21	them to execute explicit transactions We were
22	ensure that we were executing the right series of	22	advising them of what the overall cash position
23	transactions, but the actual activity was executed	23	was and what we saw as the collateral position.
24	entirely by John's team, and there was no	24	<b>Q. So you told them what the needs were,</b>
25	reporting line from John to me	25	<b>they figured out how to get the cash, right?</b>
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1	HIGHLY CONFIDENTIAL - PAOLO TONUCCI 12	1	HIGHLY CONFIDENTIAL - PAOLO TONUCCI 13
2	A. Yes.	2	<b>Q. And you, Mr. Tonucci, you were much more</b>
3	<b>Q. Was that the case during the week</b>	3	<b>hands-on involved in the mechanics of repurchase</b>
4	<b>of September 15 as well. Were those the roles</b>	4	<b>agreements that week, correct?</b>
5	<b>played by yourself and Mr. Coghlan during the week</b>	5	A. I would not say so, actually. I don't
6	<b>of September 15, 2008?</b>	6	recall -- I don't recall anything other than
7	A. In the week leading up to?	7	really the oversight of the sort of final
8	<b>Q. No, the week of September 15, starting</b>	8	positions, the final trades that were booked So
9	<b>Monday 15 September?</b>	9	I wouldn't say that there was a -- I wouldn't say
10	A. The position was quite different at that	10	that there was a significant change in my level of
11	point We were certainly trying to -- we were	11	involvement.
12	certainly trying to execute the same function,	12	<b>Q. We have a window into sort of your</b>
13	meaning that we were trying to calculate and	13	<b>involvement that week through e-mails and</b>
14	advise what the cash position was and what the	14	<b>testimony from other people. Would you say your</b>
15	financing requirements were. However, the access	15	<b>involvement with repos that week was similar to</b>
16	to information and our ability to predict the	16	<b>your investment with repos in prior weeks and</b>
17	position was impaired by both difficulties with	17	<b>months?</b>
18	the change in the group that had happened, because	18	A. I would say probably a little bit more
19	obviously all of the intercompanies, the	19	If you look at the volume of repos that week and
20	intercompany activity was severely impaired or	20	the volume of repo counterparties, there were very
21	completely ceased, and the difficulties with	21	few. There were repos with the Fed and with
22	getting information from clearers and from the	22	Barclays and probably a couple of other
23	exchanges, but we were trying to perform that same	23	counterparties So there were very few repos
24	function of forecasting and advising what the cash	24	being executed. So consequently I think, you
25	position was and the collateral position.	25	know, the level of oversight of those particular

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<p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 14</p> <p>2 repos was greater than would typically have been</p> <p>3 the case for a much larger set of repos.</p> <p>4 <b>Q. And your personal involvement in those</b></p> <p>5 <b>particular repos was much greater than your</b></p> <p>6 <b>involvement had been on prior repos. Is that</b></p> <p>7 <b>correct?</b></p> <p>8 MR. HUME. Object to the form of the</p> <p>9 question and to the lack of foundation. I think</p> <p>10 if you have e-mails you should show him to</p> <p>11 characterize what you are asking.</p> <p>12 MR. TAMBE: Do you have my question in</p> <p>13 mind?</p> <p>14 A. I am not sure, this point about much</p> <p>15 more involved, it is difficult for me to respond</p> <p>16 to. I would say that there was slightly more</p> <p>17 involvement than there would have been in a normal</p> <p>18 day's repo activity but I would not say that I was</p> <p>19 much more involved, no.</p> <p>20 <b>Q. Let's see what you were involved in</b></p> <p>21 <b>during that week broadly. I am going to start in</b></p> <p>22 <b>this period beginning September 12, Friday</b></p> <p>23 <b>through September 22, the Monday. Start at the</b></p> <p>24 <b>beginning, September 12, and just generally tell</b></p> <p>25 <b>me what your involvement was in the events of that</b></p>	<p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 15</p> <p>2 weekend, in terms of possibly doing transactions</p> <p>3 with buyers, the filing of the bankruptcy, your</p> <p>4 role in the sale of assets to Barclays and finally</p> <p>5 the closing of the transaction on September 22,</p> <p>6 and we will take it in pieces but I want to get an</p> <p>7 overview of your recollection of your involvement</p> <p>8 during that ten day period. Okay?</p> <p>9 A. Okay.</p> <p>10 <b>Q. Let's start with the weekend before the</b></p> <p>11 <b>filing of the bankruptcy. What were you involved</b></p> <p>12 <b>in starting on Friday, September 12?</b></p> <p>13 A. Friday was a trading day and so the</p> <p>14 range of activity included overseeing our</p> <p>15 financing position that day and our financing --</p> <p>16 our liquidity forecasting, which I would</p> <p>17 characterize as regular daily activity, regular</p> <p>18 daily oversight.</p> <p>19 There was due diligence, specifically</p> <p>20 with Bank of America for much of that day, and</p> <p>21 there was towards the end of the day discussion</p> <p>22 with Barclays directly and with the due diligence</p> <p>23 teams at one other potential buyer.</p> <p>24 <b>Q. What other potential buyer?</b></p> <p>25 A. Nomura, but I didn't speak to them</p>
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<p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 16</p> <p>2 directly.</p> <p>3 <b>Q. And I gather from your answer then you</b></p> <p>4 <b>were speaking directly with the due diligence</b></p> <p>5 <b>teams from Bank of America?</b></p> <p>6 A. Yes.</p> <p>7 <b>Q. And you had direct discussions with</b></p> <p>8 <b>Barclays towards the end of the day on the 12th?</b></p> <p>9 A. Yes, in the capacity of due diligence,</p> <p>10 not negotiations</p> <p>11 <b>Q. And when you mean in capacity of due</b></p> <p>12 <b>diligence you were providing information?</b></p> <p>13 A. That is right.</p> <p>14 <b>Q. In terms of liquidity management on the</b></p> <p>15 <b>12th, were there any particular constraints on</b></p> <p>16 <b>Lehman or challenges for Lehman in terms of</b></p> <p>17 <b>managing its liquidity for operations on the 12th?</b></p> <p>18 A. Yes.</p> <p>19 <b>Q. Can you describe what those constraints</b></p> <p>20 <b>were?</b></p> <p>21 A. There was a large cash request from</p> <p>22 JP Morgan, which was for \$5 billion in cash, and</p> <p>23 that was a significant challenge. There were</p> <p>24 changes being made to secured funding haircuts and</p> <p>25 collateral agreements and there were margin</p>	<p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 17</p> <p>2 requests from a variety of clients. So overall</p> <p>3 I would characterize it as extremely busy and</p> <p>4 complicated</p> <p>5 <b>Q. You used a phrase, "There were changes</b></p> <p>6 <b>in secured funding haircuts", is that right? I</b></p> <p>7 <b>want to understand what you mean by "haircuts"?</b></p> <p>8 A. The difference between the market value</p> <p>9 and the cash received is known as the haircut in</p> <p>10 a secured funding arrangement, the market value of</p> <p>11 the securities I should say.</p> <p>12 <b>Q. So is it fair to say that the haircut</b></p> <p>13 <b>allows you to determine how much cash you can</b></p> <p>14 <b>borrow against a given market value of securities?</b></p> <p>15 A. That is correct.</p> <p>16 <b>Q. And what were the changes in haircuts on</b></p> <p>17 <b>the 12th, generally?</b></p> <p>18 A. Generally, they were that the haircuts</p> <p>19 were widening, but I don't have any specifics. I</p> <p>20 don't recall any specifics.</p> <p>21 <b>Q. We go into the weekend of 13 and 14</b></p> <p>22 <b>September. Describe for me what you were --</b></p> <p>23 <b>describe for me what your duties were that weekend</b></p> <p>24 <b>and what you were doing that weekend?</b></p> <p>25 A. Due diligence continued Discussion</p>

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<p>1       HIGHLY CONFIDENTIAL - PAOLO TONUCCI       18</p> <p>2       with the internal team on potential outcomes and</p> <p>3       the management of potential purchases. Some</p> <p>4       discussion with external lawyers acting for the</p> <p>5       Board in terms of fairness opinions.</p> <p>6       <b>Q. Generally, when you are talking about</b></p> <p>7       <b>interactions you had with external counsel for</b></p> <p>8       <b>Lehman Brothers during that time period, you can</b></p> <p>9       <b>identify that you had those contacts but I would</b></p> <p>10       <b>urge you not to disclose the substance of your</b></p> <p>11       <b>conversations with external counsel for Lehman.</b></p> <p>12       <b>Understood?</b></p> <p>13       A. Yes.</p> <p>14       <b>Q. I mean when my question is requesting an</b></p> <p>15       <b>answer of that type, just alert me if you think</b></p> <p>16       <b>you are going to have to tell me about</b></p> <p>17       <b>conversations with external counsel. Fair?</b></p> <p>18       A. Yes.</p> <p>19       <b>Q. In terms of who the potential purchasers</b></p> <p>20       <b>being discussed were over the weekend</b></p> <p>21       <b>of September 13 and 14, you had BFA, correct?</b></p> <p>22       A. Correct.</p> <p>23       <b>Q. Barclays was still a potential</b></p> <p>24       <b>purchaser?</b></p> <p>25       A. Barclays was the most likely purchaser.</p>	<p>1       HIGHLY CONFIDENTIAL - PAOLO TONUCCI       19</p> <p>2       <b>Q. Nomura, was that still a potential</b></p> <p>3       <b>purchaser?</b></p> <p>4       A. Not that I was aware of</p> <p>5       <b>Q. Other than those three were any other</b></p> <p>6       <b>potential purchasers discussed that weekend?</b></p> <p>7       A. Not that I am aware of.</p> <p>8       <b>Q. When you say you had discussions with</b></p> <p>9       <b>the internal team, who was the internal team that</b></p> <p>10       <b>you were having discussions with?</b></p> <p>11       A. Largely with Ian Lowitt but with other</p> <p>12       members of Lehman's senior management.</p> <p>13       <b>Q. Do you recall any of the other members</b></p> <p>14       <b>of senior management that you had discussions with</b></p> <p>15       <b>that weekend?</b></p> <p>16       A. Bart McDade, Tom Russo, Stephen</p> <p>17       Birkenfeld, Alex Kirk</p> <p>18       <b>Q. Any others?</b></p> <p>19       A. I can't recall.</p> <p>20       <b>Q. When did you first learn that Lehman</b></p> <p>21       <b>Brothers Holdings Inc was contemplating</b></p> <p>22       <b>a bankruptcy filing?</b></p> <p>23       A. I believe first contemplated on</p> <p>24       Saturday.</p> <p>25       <b>Q. Were you asked to perform any tasks</b></p>
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<p>1       HIGHLY CONFIDENTIAL - PAOLO TONUCCI       20</p> <p>2       specifically in connection with contemplated</p> <p>3       filing of the bankruptcy?</p> <p>4       A. Only one comes to mind, which was to</p> <p>5       make a payment to Weil Gotshal.</p> <p>6       <b>Q. We go ahead with the bankruptcy filing</b></p> <p>7       <b>on September 15. Describe for me the kinds of</b></p> <p>8       <b>things you were doing on September 15. What was</b></p> <p>9       <b>your day like?</b></p> <p>10       A. So the filing happened in the early</p> <p>11       hours of the morning and there was great confusion</p> <p>12       about the consequences of that, so much of the day</p> <p>13       was spent fielding telephone calls from various</p> <p>14       parts of the organization within Lehman, some from</p> <p>15       external counterparties seeking clarification as</p> <p>16       to the position, which entities may have filed and</p> <p>17       the position of the remaining entities, and trying</p> <p>18       to oversee the position and funding for LBI, the</p> <p>19       US broker dealer.</p> <p>20       <b>Q. Describe for me what actions you took</b></p> <p>21       <b>and conversations you had in connection with the</b></p> <p>22       <b>funding for LBI, the US broker dealer on the 15th?</b></p> <p>23       A. We had been instructed that the Fed</p> <p>24       would be providing secured financing and that</p> <p>25       other secured financing arrangements would be</p>	<p>1       HIGHLY CONFIDENTIAL - PAOLO TONUCCI       21</p> <p>2       maturing, so the discussion to the extent that</p> <p>3       there was any was really just about executing that</p> <p>4       transaction</p> <p>5       <b>Q. When you say "that transaction", the Fed</b></p> <p>6       <b>transaction?</b></p> <p>7       A. With the Fed, yes</p> <p>8       <b>Q. Were you involved in executing the</b></p> <p>9       <b>transaction with the Fed?</b></p> <p>10       A. Not executing it, no</p> <p>11       <b>Q. Were you involved with negotiating the</b></p> <p>12       <b>transaction with the Fed?</b></p> <p>13       A. No.</p> <p>14       <b>Q. What was your involvement with the Fed</b></p> <p>15       <b>transaction?</b></p> <p>16       A. Only overseeing the collateral, the</p> <p>17       collateral allocation and the cash received</p> <p>18       afterwards.</p> <p>19       <b>Q. When you say "overseeing collateral</b></p> <p>20       <b>allocation", what was your role in overseeing?</b></p> <p>21       <b>What specifically did you do to oversee collateral</b></p> <p>22       <b>allocation on the Fed repo?</b></p> <p>23       A. I reviewed the collateral that had been</p> <p>24       allocated and the cash that had been received</p> <p>25       against that collateral. My role was largely</p>

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<p>1       HIGHLY CONFIDENTIAL - PAOLO TONUCCI       22</p> <p>2       analytical and much of the liquidity oversight is</p> <p>3       an analytical function. It is explaining the</p> <p>4       changes in the liquidity position and explaining</p> <p>5       the financing arrangements in the context of the</p> <p>6       overall financial picture and balance sheet of the</p> <p>7       entity. So I don't know -- my group did not book</p> <p>8       the transactions or the allocations, but clearly</p> <p>9       it was important to understand the substance of</p> <p>10      the transaction and detail of the transaction that</p> <p>11      was executed to get a clear picture of the</p> <p>12      financial position of the entity.</p> <p>13      <b>Q. Who booked the transaction?</b></p> <p>14      A. The secured funding area.</p> <p>15      <b>Q. Mr. Coghlan's group?</b></p> <p>16      A. Yes.</p> <p>17      <b>Q. Did you have conversations with</b></p> <p>18      <b>Mr. Coghlan about the Fed funding on the 15th?</b></p> <p>19      A. I don't recall.</p> <p>20      <b>Q. You said you reviewed the collateral.</b></p> <p>21      <b>What were you reviewing the collateral allocated</b></p> <p>22      <b>for. Let me restate that. You stated earlier you</b></p> <p>23      <b>reviewed the collateral allocated. For what</b></p> <p>24      <b>purpose were you reviewing the collateral</b></p> <p>25      <b>allocated?</b></p>	<p>1       <b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI       23</b></p> <p>2       A. I have already explained that, to</p> <p>3       understand the financial position of the entity.</p> <p>4       It is obviously pertinent to the financial</p> <p>5       position of the entity to understand the</p> <p>6       collateral that has been transferred and the value</p> <p>7       received for that.</p> <p>8       <b>Q. So your review includes what specific</b></p> <p>9       <b>pieces of collateral that have been allocated, is</b></p> <p>10      <b>that right?</b></p> <p>11      A. That is right.</p> <p>12      <b>Q. And you also did a review of what values</b></p> <p>13      <b>had been ascribed to that collateral?</b></p> <p>14      A. That is right.</p> <p>15      <b>Q. Let's talk about the values ascribed to</b></p> <p>16      <b>the collateral allocated. Who determines the</b></p> <p>17      <b>values of the collateral, the market value of the</b></p> <p>18      <b>collateral that is being allocated for financing?</b></p> <p>19      A. The tri-party provider in the case of</p> <p>20      a tri-party repo transaction.</p> <p>21      <b>Q. And was the Fed funding a tri-party</b></p> <p>22      <b>funding?</b></p> <p>23      A. It was.</p> <p>24      <b>Q. Who was the third party?</b></p> <p>25      A. JP Morgan and Chase.</p>
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<p>1       HIGHLY CONFIDENTIAL - PAOLO TONUCCI       24</p> <p>2       <b>Q. So would it be correct to say that</b></p> <p>3       <b>JP Morgan and Chase would determine the values for</b></p> <p>4       <b>the collateral allocated by Lehman for the Fed</b></p> <p>5       <b>funding on September 15, is that correct?</b></p> <p>6       A. Yes.</p> <p>7       <b>Q. And the applicable haircuts would then</b></p> <p>8       <b>be applied to the JP Morgan valuation, is that</b></p> <p>9       <b>correct?</b></p> <p>10      A. That is correct.</p> <p>11      <b>Q. Now, Lehman would have its own values</b></p> <p>12      <b>for the collateral that was allocated to this</b></p> <p>13      <b>funding, correct?</b></p> <p>14      A. That is correct.</p> <p>15      <b>Q. Was part of your review to see how the</b></p> <p>16      <b>JP Morgan values differed from the Lehman values</b></p> <p>17      <b>for the same collateral?</b></p> <p>18      A. It was.</p> <p>19      <b>Q. Do you recall generally if the JP Morgan</b></p> <p>20      <b>values were higher, lower or the same?</b></p> <p>21      A. I don't recall.</p> <p>22      <b>Q. Do you recall there being any</b></p> <p>23      <b>significant discrepancy at any time with the</b></p> <p>24      <b>JP Morgan prices for the collateral during that</b></p> <p>25      <b>week, September 15?</b></p>	<p>1       <b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI       25</b></p> <p>2       MR. HUME: Object to the form of the</p> <p>3       question. Any time during the week?</p> <p>4       MR. TAMBE: Yes.</p> <p>5       A. I don't recall.</p> <p>6       <b>Q. Generally, as a matter of mechanics,</b></p> <p>7       <b>when the tri-party provider had done a valuation</b></p> <p>8       <b>of collateral and that valuation was significantly</b></p> <p>9       <b>lower than the Lehman valuation, that would affect</b></p> <p>10      <b>how much money you could borrow, correct?</b></p> <p>11      A. That is correct.</p> <p>12      <b>Q. So you would probably disagree with the</b></p> <p>13      <b>valuation done by the third tri-party provider,</b></p> <p>14      <b>correct?</b></p> <p>15      MR. HUME: Object to the form of the</p> <p>16      question.</p> <p>17      A. No.</p> <p>18      <b>Q. You had no ability to disagree?</b></p> <p>19      A. We had no ability to disagree, nor do we</p> <p>20      have an ability to negotiate the haircuts provided</p> <p>21      by the Fed or by other lenders.</p> <p>22      <b>Q. I am not talking about the haircut, I am</b></p> <p>23      <b>talking about the market value of the collateral</b></p> <p>24      <b>before you apply the haircuts?</b></p> <p>25      A. We had no ability to object.</p>



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<p>1       HIGHLY CONFIDENTIAL - PAOLO TONUCCI       26</p> <p>2       I certainly did not</p> <p>3       <b>Q. Do you recall what the term was of the</b></p> <p>4       <b>Fed funding that was put in place on 15 September?</b></p> <p>5       A. I believe it was overnight</p> <p>6       <b>Q. Moving to the 16th, was that facility</b></p> <p>7       <b>rolled over on the 16th?</b></p> <p>8       A. The majority of the facility was rolled</p> <p>9       over. Barclays provided some financing as well so</p> <p>10      the amount of the facility with the Fed reduced.</p> <p>11      <b>Q. Before we get to the 16th, on the 15th,</b></p> <p>12      <b>other than dealing with the Fed funding, were you</b></p> <p>13      <b>also involved in any discussions about a possible</b></p> <p>14      <b>acquisition of the North American assets by</b></p> <p>15      <b>Barclays?</b></p> <p>16      A. I was not, no.</p> <p>17      <b>Q. Were you aware that Barclays had</b></p> <p>18      <b>returned to Lehman to engage Lehman in discussions</b></p> <p>19      <b>about that?</b></p> <p>20      A. I was aware, yes.</p> <p>21      <b>Q. How did you become aware of that?</b></p> <p>22      A. I can't remember who advised me but</p> <p>23      someone, one of the senior members of the firm had</p> <p>24      advised me that that was the case.</p> <p>25      <b>Q. On the 15th through the morning of the</b></p>	<p>1       <b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI       27</b></p> <p>2       <b>16th were you involved in any negotiations with</b></p> <p>3       <b>Barclays about the purchase by Barclays of</b></p> <p>4       <b>Lehman's North American assets?</b></p> <p>5       A. I was not.</p> <p>6       <b>Q. But you were aware those negotiations</b></p> <p>7       <b>were taking place, correct?</b></p> <p>8       A. I was.</p> <p>9       <b>Q. Did you provide any due diligence</b></p> <p>10      <b>information in that time period?</b></p> <p>11      A. I don't believe so.</p> <p>12      <b>Q. What was your understanding of what</b></p> <p>13      <b>transaction was being contemplated on the 15th</b></p> <p>14      <b>over into the 16th between Lehman and Barclays?</b></p> <p>15      A. I understood that it was the purchase of</p> <p>16      the business and assets, some selection of assets</p> <p>17      of the North American Lehman Brothers business.</p> <p>18      <b>Q. And either on the 15th or 16th did you</b></p> <p>19      <b>have any understanding of what the economics of</b></p> <p>20      <b>that deal were?</b></p> <p>21      MR. HUME. Objection, lacks foundation.</p> <p>22      A. Not really. I mean, I was aware of the</p> <p>23      balance sheet that was being agreed at a very</p> <p>24      summary level and, as I am sure you know, Martin</p> <p>25      Kelly sent me a note advising me of some of the</p>
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<p>1       HIGHLY CONFIDENTIAL - PAOLO TONUCCI       28</p> <p>2       details, so I had a very general sense of the</p> <p>3       substance of the transaction, but to say that</p> <p>4       I understood the economics would be, you know,</p> <p>5       would not be accurate.</p> <p>6       <b>Q. The Martin Kelly e-mail that you are</b></p> <p>7       <b>referring to, is that the one that talks about the</b></p> <p>8       <b>5 billion-dollar loss?</b></p> <p>9       A. That is right</p> <p>10      <b>Q. Let's take a look at that e-mail. It is</b></p> <p>11      <b>136A.</b></p> <p>12      <b>(Exhibit 136A marked for identification)</b></p> <p>13      MR. HUME: Is that a new number?</p> <p>14      MR. TAMBE Yes.</p> <p>15      MR. HUME: Has this document not been</p> <p>16      made an exhibit yet?</p> <p>17      MR. TAMBE: I just do not know if it has</p> <p>18      been. Wherever possible we are trying to avoid</p> <p>19      re-marking exhibits My guess is this one has</p> <p>20      been. We could not figure out what the number</p> <p>21      was.</p> <p>22      Mr. Tonucci, I have placed before you</p> <p>23      a document marked Exhibit 136A Is that the</p> <p>24      e-mail that you were referring to?</p> <p>25      A That is correct.</p>	<p>1       HIGHLY CONFIDENTIAL - PAOLO TONUCCI       29</p> <p>2       <b>Q. That is an e-mail from Martin Kelly, you</b></p> <p>3       <b>are cc'd on that e-mail at the bottom. Do you see</b></p> <p>4       <b>that?</b></p> <p>5       A. Yes</p> <p>6       <b>Q. There is a reference in there to a</b></p> <p>7       <b>"\$5 billion all in economic loss versus our</b></p> <p>8       <b>marks". Do you see that?</b></p> <p>9       A I do</p> <p>10      <b>Q. What was your understanding of that</b></p> <p>11      <b>phrase? What did that mean?</b></p> <p>12      A. I read that to mean that there would be</p> <p>13      a discount to the marks at that time on the</p> <p>14      assets.</p> <p>15      <b>Q. And this notion of a discount on the</b></p> <p>16      <b>marks on the assets, was that a feature of the</b></p> <p>17      <b>transaction that ultimately persisted with the</b></p> <p>18      <b>transaction as it unfolded?</b></p> <p>19      MR. HUME Objection, calls for</p> <p>20      speculation and lacks foundation</p> <p>21      A. Can you repeat?</p> <p>22      <b>Q. Let me rephrase. You understood the</b></p> <p>23      <b>5 billion dollars all in economic loss versus our</b></p> <p>24      <b>marks to be a reference to a discount off the</b></p> <p>25      <b>marks, correct?</b></p>

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<p>1       <b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>       <b>30</b></p> <p>2       A. Yes.</p> <p>3       <b>Q. The deal that was ultimately done and</b></p> <p>4       <b>closed on September 22, that too included</b></p> <p>5       <b>a discount off of Lehman's marks, correct?</b></p> <p>6       A. That is correct</p> <p>7       <b>Q. Okay, and the amount of that discount</b></p> <p>8       <b>off of Lehman's marks was about \$5 billion, is</b></p> <p>9       <b>that right?</b></p> <p>10       MR. HUME: Objection, lacks foundation.</p> <p>11       A. It is uncertain, because obviously there</p> <p>12       were a lot of valuation movements and so</p> <p>13       I couldn't say with certainty, but certainly what</p> <p>14       I can say is versus the valuations that I recall</p> <p>15       seeing from our analysis it was about that number.</p> <p>16       <b>Q. About \$5 billion?</b></p> <p>17       A. About \$5 billion</p> <p>18       <b>Q. Was it your understanding that about</b></p> <p>19       <b>a \$5 billion discount was a negotiated amount of</b></p> <p>20       <b>discount?</b></p> <p>21       MR. HUME: Objection, lacks foundation.</p> <p>22       A. Only insofar as what I can read in this</p> <p>23       e-mail.</p> <p>24       <b>Q. Here is what I am getting at. This</b></p> <p>25       <b>e-mail, 136A, is sent to you on</b></p>	<p>1       <b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>       <b>31</b></p> <p>2       early September 16, correct? The deal that is</p> <p>3       contemplated on the 16th changes in many ways by</p> <p>4       the 22nd, correct?</p> <p>5       A. Yes.</p> <p>6       <b>Q. The amount of the discount in this</b></p> <p>7       <b>e-mail, the \$5 billion you are telling me was</b></p> <p>8       <b>about the discount when all was said and done at</b></p> <p>9       <b>the end of the day, is that correct?</b></p> <p>10       A. That is correct</p> <p>11       <b>Q. Is it your understanding that the</b></p> <p>12       <b>\$5 billion amount was the agreed upon discount for</b></p> <p>13       <b>the transaction?</b></p> <p>14       MR. HUME. Objection, the witness has</p> <p>15       said he did not participate in the negotiations</p> <p>16       and so the question lacks foundation.</p> <p>17       A. Only as I said from what I read here. I</p> <p>18       didn't have any further discussions about the</p> <p>19       discount that I can recall.</p> <p>20       <b>Q. Do you have an understanding of how the</b></p> <p>21       <b>discount was effected, how was the discount made</b></p> <p>22       <b>available to Barclays?</b></p> <p>23       MR. HUME: Objection, vague and</p> <p>24       ambiguous.</p> <p>25       A. Do you want to reword that?</p>
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<p>1       <b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>       <b>32</b></p> <p>2       <b>Q. Do you have trouble with the question?</b></p> <p>3       A. Not sure what you mean</p> <p>4       <b>Q. How did Barclays get the</b></p> <p>5       <b>5 billion-dollar discount?</b></p> <p>6       A. Right. I think what was contemplated in</p> <p>7       the negotiation, and what was executed in terms of</p> <p>8       the settlement probably differed slightly, you</p> <p>9       know, and involved over the week the settlement of</p> <p>10       the transaction, meaning the actual transfer of</p> <p>11       securities and cash was through the repo</p> <p>12       agreements, and essentially the termination of</p> <p>13       those repo agreements.</p> <p>14       <b>Q. Was the discount given to Barclays by</b></p> <p>15       <b>defaulting on the repo?</b></p> <p>16       MR. HUME: Objection. You are asking</p> <p>17       the witness very general questions about</p> <p>18       a complicated transaction without walking him</p> <p>19       through any of the details of that transaction. I</p> <p>20       think the line of questioning lacks foundation.</p> <p>21       MR. TAMBE: You have an objection to</p> <p>22       form, right, Hamish? So noted. Answer the</p> <p>23       question, please.</p> <p>24       MR. HUME: I think the line of</p> <p>25       questioning is calling for speculation and lacks</p>	<p>1       <b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>       <b>33</b></p> <p>2       foundation.</p> <p>3       MR. TAMBE: Do you remember my question?</p> <p>4       Probably not. Do you want it read back?</p> <p>5       A. Yes, please.</p> <p>6       (Read back)</p> <p>7       A. Yes, I would say that was the way in</p> <p>8       which the transaction was settled, so that is</p> <p>9       fair</p> <p>10       <b>Q. Would it also be fair to say, therefore,</b></p> <p>11       <b>that the discount was embedded in the haircut on</b></p> <p>12       <b>the repo transaction?</b></p> <p>13       MR. HUME: Objection, what discount?</p> <p>14       MR. TAMBE: The 5 billion-dollar</p> <p>15       discount.</p> <p>16       MR. HUME: What 5 billion-dollar</p> <p>17       discount? You have not established or laid any</p> <p>18       record of foundation</p> <p>19       MR. TAMBE. Hamish, make objection to</p> <p>20       form, move on. Don't make speaking objections.</p> <p>21       MR. HUME: The objection is this is</p> <p>22       a deliberately ambiguous and misleading line of</p> <p>23       questioning</p> <p>24       MR. TAMBE: Do you have my question in</p> <p>25       mind?</p>

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<p>1       HIGHLY CONFIDENTIAL - PAOLO TONUCCI       34</p> <p>2       A. Could you repeat it please or read it</p> <p>3       back</p> <p>4               (Read back)</p> <p>5       A. In a repo transaction there is haircut,</p> <p>6       a difference between the market value and the cash</p> <p>7       value received. You could view that as</p> <p>8       a discount. I think in this case it is fair to</p> <p>9       say that that was the settlement mechanics and</p> <p>10       therefore the way that the difference between</p> <p>11       market value and cash paid was accomplished.</p> <p>12       There was in that sense a discount.</p> <p>13       Q. So I understand your last answer, there</p> <p>14       was a 5 billion-dollar differential, roughly,</p> <p>15       between the cash paid by Barclays and the market</p> <p>16       value of the collateral they received, correct?</p> <p>17       A. That was when I looked at our analysis,</p> <p>18       that was about the size of the number.</p> <p>19       Q. Let's go back to the week of the 16th.</p> <p>20       You get the e-mail from Martin Kelly telling you</p> <p>21       about at least an agreement in principle, correct?</p> <p>22       A. That is correct.</p> <p>23       Q. Let's move forward from there. You have</p> <p>24       got on the 16th a Fed funding facility in place,</p> <p>25       correct. Right?</p>	<p>1       HIGHLY CONFIDENTIAL - PAOLO TONUCCI       35</p> <p>2       A. That is correct.</p> <p>3       Q. And you have got a repo from Barclays as</p> <p>4       well, correct?</p> <p>5       A. Yes.</p> <p>6       Q. And there was a pre-existing master</p> <p>7       repurchase agreement with Barclays, correct?</p> <p>8       A. I believe so.</p> <p>9       Q. That was amended on Monday September 15?</p> <p>10       A. I believe so.</p> <p>11       Q. Were you involved in the amendment to</p> <p>12       that?</p> <p>13       A. I was not.</p> <p>14       Q. Who was?</p> <p>15       A. I don't know.</p> <p>16       Q. Do you have an under standing of what</p> <p>17       the terms were of the Barclays -- the amended</p> <p>18       Barclays repurchase agreement?</p> <p>19       A. I don't really recall, no.</p> <p>20       Q. Am I right to believe that there are</p> <p>21       haircut schedules associated with repo agreements?</p> <p>22       A. Correct.</p> <p>23       Q. There was such a haircut schedule in</p> <p>24       connection with the Fed repo, correct?</p> <p>25       A. There was.</p>
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<p>1       HIGHLY CONFIDENTIAL - PAOLO TONUCCI       36</p> <p>2       Q. And there was a haircut schedule on the</p> <p>3       Barclays repo, correct?</p> <p>4       A. I believe so, yes.</p> <p>5       Q. Do you recall there being any</p> <p>6       significant difference between the haircuts on the</p> <p>7       Fed repo and the haircuts on the Barclays repo?</p> <p>8       MR. HUME: Objection.</p> <p>9       A. There were certainly differences, I</p> <p>10       can't recall how significant.</p> <p>11       Q. Do you remember if there were particular</p> <p>12       asset classes in which there were differences?</p> <p>13       A. I don't, no.</p> <p>14       Q. The Fed repo was an overnight repo,</p> <p>15       right?</p> <p>16       A. Correct.</p> <p>17       Q. So it rolled over from the 15th to the</p> <p>18       16th?</p> <p>19       A. Correct.</p> <p>20       Q. And rolled over again from the 16th to</p> <p>21       the 17th?</p> <p>22       A. Not the same size, no.</p> <p>23       Q. Tell me briefly what the changes were,</p> <p>24       if any, in the size of the Fed repo from Monday to</p> <p>25       Tuesday to later in the week?</p>	<p>1       HIGHLY CONFIDENTIAL - PAOLO TONUCCI       37</p> <p>2       A. I can't recall the exact details. I</p> <p>3       recall that the Barclays repo on the -- again, I</p> <p>4       am not certain about this but the Barclays repo on</p> <p>5       the 16th, I believe, was for \$5 billion. On the</p> <p>6       17th I believe it was for \$8 billion and then on</p> <p>7       the Thursday there was obviously a much bigger</p> <p>8       transaction and so that changed the Fed repo,</p> <p>9       which became zero.</p> <p>10       Q. Let's talk about that bigger transaction</p> <p>11       on Thursday, okay. Describe for me how the Fed</p> <p>12       repo went to zero and what happened with the</p> <p>13       Barclays repo on Thursday?</p> <p>14       A. It is difficult for me to talk about the</p> <p>15       mechanics because I am not that close to the</p> <p>16       operational mechanics of the repo being unwound,</p> <p>17       but my understanding was that the repo unwound on</p> <p>18       the Thursday morning, which would be typical in</p> <p>19       a tri-party repo, that an overnight repo would</p> <p>20       unwind, you would return the collateral and the</p> <p>21       cash and the transactions would then settle with</p> <p>22       that collateral that was released, and at the end</p> <p>23       of the day a new financing transaction would be</p> <p>24       settled.</p> <p>25       In this instance there was complexity because</p>

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<p>1       <b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>       38</p> <p>2       JP Morgan was the tri-party agent for Lehman and had been</p> <p>3       the tri-party agent in the transaction with the Fed. BONY</p> <p>4       was the tri-party agent for Barclays and so there was a need</p> <p>5       to transfer collateral from JP Morgan to Bank of New York</p> <p>6       tri-party system, and I am not sure about the mechanics</p> <p>7       involved in that transfer but it was clearly a more</p> <p>8       complicated transaction than if the financing had just been</p> <p>9       through the JP Morgan tri-party system.</p> <p>10      <b>Q. Is it your understanding that on</b></p> <p>11      <b>Thursday, in this bigger transaction on Thursday,</b></p> <p>12      <b>Barclays effectively replaced the Fed and the Fed</b></p> <p>13      <b>funding transaction?</b></p> <p>14      A. I was not involved in the discussions</p> <p>15      with Barclays or with the Fed on the removal or</p> <p>16      replacement of the Fed in that transaction, so I</p> <p>17      can't really talk to the specifics, but my</p> <p>18      understanding was that the Fed transaction was</p> <p>19      going to mature on the Thursday and they were not</p> <p>20      really providing any financing subsequently.</p> <p>21      <b>Q. Wednesday night into Thursday, do you</b></p> <p>22      <b>recall the size of the Fed funding being</b></p> <p>23      <b>approximately \$45 billion?</b></p> <p>24      A. Yes, that sounds about right.</p> <p>25      <b>Q. And the Fed was holding approximately</b></p>	<p>1       <b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>       39</p> <p>2       <b>\$50 billion in collateral against that financing?</b></p> <p>3       A. That sounds right.</p> <p>4       <b>Q. And the big transaction that you</b></p> <p>5       <b>described on Thursday effectively had Barclays</b></p> <p>6       <b>coming in and putting in \$45 billion to pay off</b></p> <p>7       <b>the Fed repo, correct?</b></p> <p>8       A. I understood that they were going to be</p> <p>9       putting in 45, that it was going to be</p> <p>10      a 45 billion-dollar transaction, yes.</p> <p>11      <b>Q. And all the collateral that was being</b></p> <p>12      <b>held by the Fed was then going to be transferred</b></p> <p>13      <b>to Barclays, correct?</b></p> <p>14      MR. HUME: Objection, asked and</p> <p>15      answered. He has already explained.</p> <p>16      A. To be honest, I was not close enough to</p> <p>17      the actual transaction that was being booked to</p> <p>18      know exactly where all the collateral was going to</p> <p>19      end up, nor was I close enough to any agreements</p> <p>20      with Barclays or with the Fed as to where all of</p> <p>21      the collateral was going to end up.</p> <p>22      <b>Q. So effectively on Thursday the Fed</b></p> <p>23      <b>funding goes down to zero, correct?</b></p> <p>24      A. That is correct.</p> <p>25      <b>Q. And they exit the financing picture at</b></p>
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<p>1       <b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>       40</p> <p>2       <b>that point?</b></p> <p>3       A. That is correct.</p> <p>4       <b>Q. And what you have left is the Barclays</b></p> <p>5       <b>repo, correct?</b></p> <p>6       A. That is correct.</p> <p>7       <b>Q. Describe for me what happens with the</b></p> <p>8       <b>Barclays repo over the next few business dates?</b></p> <p>9       <b>We are now into Thursday on to Friday the 19th.</b></p> <p>10      MR. HUME Again, objection to the form</p> <p>11      of the question and the lack of foundation.</p> <p>12      A. That transaction happened on Thursday.</p> <p>13      That was essentially the last of that transaction</p> <p>14      in the way that I think about it. It was executed</p> <p>15      on Thursday night and settled Thursday night into</p> <p>16      Friday morning and that was the end of that</p> <p>17      transaction. After that it was just a matter of</p> <p>18      that transaction terminating and the collateral</p> <p>19      being rebooked as a purchase by Barclays and as</p> <p>20      a sale by Lehman.</p> <p>21      <b>Q. Do you recall if the Barclays repo was</b></p> <p>22      <b>terminated on Friday?</b></p> <p>23      A. I don't.</p> <p>24      <b>Q. The legal documentation for the</b></p> <p>25      <b>Lehman/Barclays transaction, are you generally</b></p>	<p>1       <b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>       41</p> <p>2       <b>familiar with that documentation?</b></p> <p>3       A. With parts of it.</p> <p>4       <b>Q. What do you understand the operative</b></p> <p>5       <b>legal documentation to be for that transaction?</b></p> <p>6       MR. HUME I am going to object again.</p> <p>7       You are asking -- he said he is not a negotiator.</p> <p>8       You have shown him their documents and you keep</p> <p>9       asking him to speculate about the entire</p> <p>10      transaction. I will counsel the witness not to</p> <p>11      speculate.</p> <p>12      A. I am not a lawyer but I believe that the</p> <p>13      asset purchase agreement is the document that you</p> <p>14      are referring to.</p> <p>15      <b>Q. Is that a document that you -- when is</b></p> <p>16      <b>the first time you saw the asset purchase</b></p> <p>17      <b>agreement?</b></p> <p>18      A. Not until a long time after the</p> <p>19      transaction closed</p> <p>20      <b>Q. Is it fair to say during the week of the</b></p> <p>21      <b>15th to the 22nd you did not see the asset</b></p> <p>22      <b>purchase agreement?</b></p> <p>23      A. I didn't, no.</p> <p>24      <b>Q. Did you see something called</b></p> <p>25      <b>a clarification letter?</b></p>

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<p>1       <b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>       <b>42</b></p> <p>2       A   Not until long after the close.</p> <p>3       <b>Q. You know what I mean by "clarification</b></p> <p>4       <b>letter"?</b></p> <p>5       A   I know what you mean when you say the</p> <p>6       clarification letter in relation to this</p> <p>7       transaction, yes.</p> <p>8       <b>Q. I am sorry, I cut you off. What is your</b></p> <p>9       <b>understanding of the clarification letter?</b></p> <p>10       MR. HUME. Objection. Same objection</p> <p>11       You are asking someone who was not a negotiator,</p> <p>12       who is not a lawyer to speculate as to the meaning</p> <p>13       of these documents that you are not even showing</p> <p>14       him.</p> <p>15       A. Only that it was a clarification to the</p> <p>16       purchase agreement</p> <p>17       <b>Q. Do you know when it was negotiated?</b></p> <p>18       A. I believe on the -- prior to closing on</p> <p>19       the -- I don't remember   Actually, I don't know</p> <p>20       when it was negotiated</p> <p>21       <b>Q. Did anyone ever tell you why</b></p> <p>22       <b>a clarification letter was needed?</b></p> <p>23       A. No.</p> <p>24       <b>Q. Did you review any drafts of</b></p> <p>25       <b>a clarification letter?</b></p>	<p>1       <b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>       <b>43</b></p> <p>2       MR. HUME: Objection, asked and</p> <p>3       answered.</p> <p>4       A. No.</p> <p>5       <b>Q. During the week of September 15, so from</b></p> <p>6       <b>the 15th through the 19th, were you aware of any</b></p> <p>7       <b>mark downs on the Lehman assets on Lehman's own</b></p> <p>8       <b>books?</b></p> <p>9       MR. HUME: Objection, vague and</p> <p>10       ambiguous.</p> <p>11       A. There was a great deal of volatility in</p> <p>12       prices over that week so I can't really sort of</p> <p>13       answer whether there were any specific mark downs.</p> <p>14       I was not part of the process of re-marking those</p> <p>15       books or re-marking the assets, but there was</p> <p>16       a great deal of price volatility and so I would</p> <p>17       certainly expect that there would be asset price</p> <p>18       movements and I would expect most of them to be</p> <p>19       down.</p> <p>20       <b>Q. Were you aware of a general mark down</b></p> <p>21       <b>process in connection with Lehman's assets during</b></p> <p>22       <b>that week?</b></p> <p>23       A. No</p> <p>24       <b>Q. Going back to Thursday and the closing</b></p> <p>25       <b>out of the Fed facility, and then the Barclays</b></p>
Page 44	Page 45
<p>1       <b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>       <b>44</b></p> <p>2       repo, you said the Bank of New York was</p> <p>3       a tri-party provider for the Barclays repo, is</p> <p>4       that right?</p> <p>5       A. That is right.</p> <p>6       <b>Q. So they would have played a similar role</b></p> <p>7       <b>to the role played by JP Morgan on the Fed</b></p> <p>8       <b>facility, correct?</b></p> <p>9       A. That is correct.</p> <p>10       <b>Q. And therefore Bank of New York would</b></p> <p>11       <b>have had prepared valuations of the collateral</b></p> <p>12       <b>that was being posted on the Barclays repo,</b></p> <p>13       <b>correct?</b></p> <p>14       A. Correct</p> <p>15       <b>Q. And they did that, correct?</b></p> <p>16       A. I believe so, yes.</p> <p>17       <b>Q. Are you familiar generally with the Bank</b></p> <p>18       <b>of New York valuations of the collateral posted by</b></p> <p>19       <b>Lehman?</b></p> <p>20       A. Generally, yes.</p> <p>21       <b>Q. Are you aware of any discrepancies</b></p> <p>22       <b>between the Bank of New York valuations for the</b></p> <p>23       <b>collateral and Lehman valuations of that same</b></p> <p>24       <b>collateral?</b></p> <p>25       MR. HUME. Objection to form, what</p>	<p>1       <b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>       <b>45</b></p> <p>2       collateral?</p> <p>3       <b>Q. The Barclays collateral.</b></p> <p>4       A. There was certainly a very comprehensive</p> <p>5       reconciliation required because of the number of</p> <p>6       securities that were moving, and some of those</p> <p>7       securities were quite complicated in terms of not</p> <p>8       just the valuation but the actual amounts. These</p> <p>9       are mortgage securities, mortgage pass throughs,</p> <p>10       so there was a very big reconciliation required</p> <p>11       and there were differences identified in the</p> <p>12       details of the securities   There were differences</p> <p>13       in the valuations and for certain there were</p> <p>14       differences in the valuations.</p> <p>15       <b>Q. And this reconciliation process that you</b></p> <p>16       <b>just described, when did that take place?</b></p> <p>17       A. I think the reconciliation that I</p> <p>18       remember sort of in detail was after the closing</p> <p>19       I think we tried to do a reconciliation on the</p> <p>20       Friday   When I say "we", it was within the</p> <p>21       operations team, and certainly after the 22nd or</p> <p>22       on the 22nd, and after there were more detailed</p> <p>23       reconciliations produced.</p> <p>24       <b>Q. When you got to Barclays were you</b></p> <p>25       <b>involved in dealing with Barclays' accountants in</b></p>

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1       **HIGHLY CONFIDENTIAL - PAOLO TONUCCI**       46

2       **accounting for the economics of the acquisition of**

3       **Lehman by Barclays?**

4       A. We were asked to contribute to the

5       initial balance sheet, the preparation of an

6       initial balance sheet, but I would say that my

7       involvement with the accountants was as an

8       information provider and was sporadic. I was not

9       involved in -- after the initial balance sheet,

10       components of the initial balance sheet were

11       provided, our balance sheet commitment, I don't

12       think I did very much in terms of the accounting

13       for the transaction.

14       **Q. In addition to helping with the**

15       **preparation of the initial balance sheet, did you**

16       **play any role in reviewing the valuation of the**

17       **acquisition in connection with the year-end**

18       **results for Barclays?**

19       A. I saw the balance sheet, the acquisition

20       balance sheet a number of times, and as I say I

21       was peripherally involved. The accounting for

22       this was quite complicated because of the

23       different entities that were involved, and so yes

24       I saw some details but the overall economics

25       I would say was not really clear to me. I was not

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1       **HIGHLY CONFIDENTIAL - PAOLO TONUCCI**       48

2       **Q. You told us that you reviewed the asset**

3       **purchase agreement and the clarification letter at**

4       **some time after the closing of the transaction?**

5       A. No, I didn't say I reviewed them.

6       I said I was shown parts of the asset purchase

7       agreement and the clarification letter.

8       **Q. Even better. Do you recall whether the**

9       **asset purchase agreement or the clarification**

10       **letter reflect a 5 billion-dollar discount?**

11       MR. HUME: Objection to the form of the

12       question. What do you mean "reflect"?

13       **Q. Do you have my question in mind?**

14       A. Could you repeat it, please?

15       (Read back)

16       MR. HUME: Again I am going to object to

17       the question since you have not shown him the

18       agreements, he is not a lawyer and he was not

19       a negotiator.

20       **Q. You were shown parts of the agreements,**

21       **right, that is what you said?**

22       A. I just don't know.

23       **Q. Let me ask you the question. You were**

24       **shown parts of these agreements, the asset**

25       **purchase agreement and the clarification letter,**

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2       sort of involved at that level

3       **Q. You are generally aware that Barclays**

4       **has reported a gain on the acquisition, correct?**

5       A. Yes. I mean, I am aware of what was

6       publicly disclosed. I have not seen the details

7       of the calculation of that.

8       **Q. What is your general understanding of**

9       **the magnitude of the gain reported by Barclays for**

10       **the year-end 2008 from the Lehman acquisition?**

11       A. That a gain on acquisition was reported

12       of over 2 billion pounds.

13       **Q. Over 2 billion pounds?**

14       A. Yes.

15       **Q. Is it your understanding that there may**

16       **well be additional gains from the acquisition that**

17       **have not yet been reported by Barclays?**

18       MR. HUME: Objection.

19       A. I am not aware of that.

20       **Q. You don't know one way or the other?**

21       A. I don't.

22       **Q. Did you ever talk to anyone as to why**

23       **Barclays was getting a 5 billion-dollar discount**

24       **on this transaction?**

25       A. I don't think I did, no.

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1       **HIGHLY CONFIDENTIAL - PAOLO TONUCCI**       49

2       **right?**

3       A. Yes.

4       **Q. The parts that you were shown, did they**

5       **show a 5 billion-dollar discount?**

6       MR. HUME: Do you recall is the

7       question.

8       A. I don't recall, no.

9       **Q. What parts of the agreement do you**

10       **recall being shown?**

11       A. I don't know. I don't know. I didn't

12       see the whole agreement so -- I don't think I saw

13       the whole agreement. I saw components of it

14       related to the various schedules of assets that

15       were being transferred and to some of the other

16       assets that were included in the agreement.

17       **Q. Was there a particular task or event in**

18       **connection with which you were shown these pieces**

19       **or parts of the transaction documents?**

20       A. Yes, in the preparation I would say of

21       revisions to Schedule B to the agreement and in

22       the analysis of the 15c3 receivables.

23       **Q. And what role did you play in connection**

24       **with the revisions to Schedule B?**

25       A. Providing some analytical support to the

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1       HIGHLY CONFIDENTIAL - PAOLO TONUCCI       50

2       determination of available collateral.

3       **Q. Does that mean you determined what**

4       **collateral was available to be included in**

5       **Schedule B?**

6       A. No.

7       **Q. What do you mean by "analytical**

8       **support"?**

9       A. It means that I helped coordinate the

10      process of reviewing collateral that may be

11      available that was being extracted from various

12      systems that you would typically use, whether it

13      was the operations systems or some of the

14      databases which aggregate that information and

15      provide a different cut of analysis. So my work,

16      my involvement, was in reviewing that to ensure

17      that it was being appropriately queried and

18      analyzed and understood, validated.

19      **Q. Who else was involved in this process?**

20      A. The operations team were really the

21      experts in the operating systems and therefore in

22      understanding the availability of collateral.

23      **Q. Who was the operations team?**

24      A. Alastair --

25      **Q. Who was the operations team doing this?**

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1       HIGHLY CONFIDENTIAL - PAOLO TONUCCI       52

2       you are talking about, is it errors about

3       identifying particular pieces of collateral? Is

4       that the nature?

5       A. That is correct.

6       **Q. When you said "stock record breaks",**

7       **what do you mean by "stock record breaks"?**

8       A. These are breaks between the internal

9       accounting records and the external depository

10      statements.

11      **Q. In terms of ownership of particular**

12      **securities, is that what you mean?**

13      A. In terms of possession

14      **Q. Did these revisions to Schedule B that**

15      **took place post-close affect the value of the**

16      **collateral that was listed on Schedule B, the**

17      **total value?**

18      MR HUME: Objection. The revisions to

19      Schedule B are being referred to -- I believe the

20      record is unclear whether you mean revisions to

21      the schedule filed a week after the closing or any

22      subsequent work after that. For the line of

23      questioning to be clear that needs to be made

24      clear in the questions.

25      MR TAMBE: I am talking about the

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1       HIGHLY CONFIDENTIAL - PAOLO TONUCCI       51

2       A. Alastair Blackwell manages that team.

3       I would say that Jim Hraska was the person most

4       involved

5       **Q. And this event that you are describe,**

6       **the revisions to Schedule B, this is post-closing,**

7       **correct?**

8       A. That is correct.

9       **Q. And in the weeks immediately after the**

10      **closing of the transaction?**

11      A. Pre-closing there was an analysis

12      performed to determine the unencumbered

13      collateral, as I am sure you are aware, which was

14      the basis for the original Schedule B. The

15      subsequent analysis I would say was to correct for

16      errors that may have been made in the initial

17      aggregation of information in the initial

18      analysis, and to reflect some of the breaks in the

19      different systems that were used, stock record

20      breaks for example. That exercise continued

21      sporadically through the remaining three months of

22      2008.

23      **Q. Again, just talking about the revisions**

24      **to Schedule B, I want to talk about the**

25      **post-closing revisions to Schedule B. The errors**

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1       HIGHLY CONFIDENTIAL - PAOLO TONUCCI       53

2       revisions to Schedule B that you talked about,

3       Mr. Tonucci

4       MR HUME: There have been a number of

5       answers that he has provided so I still think the

6       question is unclear

7       MR. TAMBE: So the revisions to Schedule

8       B that you were talking about, did those revisions

9       affect the total value of the Schedule B?

10      A. I am referring to the revisions that

11      happened in the period after the initial filing of

12      Schedule B and I am not sure when and if the --

13      you know, when and if revisions were actually

14      lodged with the court. I am not a lawyer and I am

15      not sure what the legal process was but certainly

16      the internal calculations of unencumbered

17      collateral is what I am referring to as the

18      revisions to Schedule B that happened essentially

19      after the initial filing of Schedule B in

20      late September, and those revisions changed the

21      collateral detail significantly. So the values

22      clearly changed along with the composition of the

23      assets.

24      **Q. Did they change up, increasing value, or**

25      **did they change down?**

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1	<b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI 54</b>	1	<b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI 55</b>
2	A I believe they changed in both	2	Barclays?
3	directions.	3	A. I do.
4	<b>Q. As an aggregate?</b>	4	<b>Q. What can you tell us about the efforts</b>
5	A. I don't know.	5	<b>to find additional collateral for Barclays?</b>
6	<b>Q. Do you have an understanding as to the</b>	6	A. That we were asked on the morning of the
7	<b>origination of Schedule B?</b>	7	19th to find if there was additional collateral to
8	A. I do.	8	include in the transaction
9	<b>Q. What is your understanding about the</b>	9	<b>Q. Asked by whom?</b>
10	<b>origination of Schedule B?</b>	10	A. I believe I was asked by Ian Lowitt.
11	A. The origination of Schedule B was to	11	<b>Q. Did Ian Lowitt tell you why he was</b>
12	list the unencumbered collateral that was to be	12	<b>asking you to find additional collateral?</b>
13	included within the sale and purchase agreement.	13	A. He said that it was necessary for the
14	<b>Q. So this was unencumbered collateral</b>	14	transaction to close and he reiterated that
15	<b>other than the collateral that had already been</b>	15	through the day.
16	<b>posted to Barclays under the Barclays repo,</b>	16	<b>Q. In addition to Schedule B, were there</b>
17	<b>correct?</b>	17	<b>other collections of assets that were put together</b>
18	A. That is correct.	18	<b>to provide additional collateral to Barclays?</b>
19	<b>Q. And is it your recollection that the</b>	19	A. There were receivables in the form of
20	<b>origination of Schedule B goes back to Friday,</b>	20	the 15c3 reserve, which were reviewed, and through
21	<b>19 September?</b>	21	the course of the Friday there were other
22	MR. HUME Objection, lacks foundation.	22	receivables that were also reviewed to determine
23	A. That is correct.	23	if they could be included as assets or collateral
24	<b>Q. And do you recall there being an effort</b>	24	in the sales agreement.
25	<b>on September 19 to find additional collateral for</b>	25	<b>Q. What other receivables?</b>
Page 56		Page 57	
1	<b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI 56</b>	1	<b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI 57</b>
2	A. We reviewed derivative receivables and	2	A. I would say we identified the 15c3
3	margin balances, FX receivables, that is foreign	3	receivables as an asset that could be transferred
4	exchange. I should add actually we also reviewed	4	<b>Q. Who is the "we" who identified those</b>
5	some bank receivables, because there had been cash	5	<b>receivables?</b>
6	posted with some of the clearing banks, so that	6	A. It was again overseen by Ian but it was
7	was also reviewed.	7	myself, Martin Kelly, Robert Azerad.
8	<b>Q. Safe to say you looked in every corner</b>	8	<b>Q. What was approximately the value of the</b>
9	<b>for assets and receivables that you could deliver</b>	9	<b>15c3 receivables that you identified?</b>
10	<b>to Barclays?</b>	10	A. There was uncertainty, a great deal of
11	MR. HUME Objection, vague and	11	uncertainty about the excess, but there was
12	ambiguous.	12	certainty about the actual deposits that had been
13	A. We reviewed the balance sheet to see	13	made for 15c3, which included a cash deposit with
14	where there might be additional assets.	14	Wells Fargo for a billion dollars and securities
15	<b>Q. You looked everywhere, right?</b>	15	which in the calculation had been valued at, I
16	A. We looked across the whole balance	16	believe, \$769 million
17	sheet.	17	<b>Q. And so that is about what, \$1.7 billion</b>
18	<b>Q. And this was a directive from Mr. Lowitt</b>	18	<b>total?</b>
19	<b>to find these assets, correct?</b>	19	A. That is correct. There may have been
20	A. That is correct.	20	other balances. I think that there were other
21	<b>Q. And you found a bunch of unencumbered</b>	21	securities balances also that were on deposit but
22	<b>assets and put them in Schedule B?</b>	22	I recall specifically those two.
23	A. That is correct.	23	<b>Q. On the Friday the 19th, is it your</b>
24	<b>Q. And then you found these 15c3</b>	24	<b>recollection that the 15c3 receivables were</b>
25	<b>receivables, is that right?</b>	25	<b>identified as assets or receivables that in fact</b>



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<p>1       <b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>       <b>58</b></p> <p>2       <b>could be transferred to Barclays?</b></p> <p>3       MR. HUME: Objection to the lack of</p> <p>4       foundation.</p> <p>5       A. That is correct, that is my</p> <p>6       understanding.</p> <p>7       <b>Q. From your earlier answer it seems that</b></p> <p>8       <b>there were receivables that you identified that</b></p> <p>9       <b>maybe you concluded could not be transferred to</b></p> <p>10      <b>Barclays, is that fair?</b></p> <p>11      A. That is correct.</p> <p>12      <b>Q. The 15c3's could be transferred to</b></p> <p>13      <b>Barclays, right?</b></p> <p>14      MR. HUME: Objection to the vagueness of</p> <p>15      the question. What do you mean by "could"?</p> <p>16      A. I mean, I would try and clarify this --</p> <p>17      <b>Q. Sure.</b></p> <p>18      A. The thinking was that there was</p> <p>19      a surplus, in that calculation that although it</p> <p>20      was uncertain as to both the amount of the surplus</p> <p>21      and the requirement, these represented assets</p> <p>22      which were transferable and, you know,</p> <p>23      identifiable and transferable I would say that</p> <p>24      the distinction with some of the other receivables</p> <p>25      was that it was much more difficult, given our</p>	<p>1       HIGHLY CONFIDENTIAL - PAOLO TONUCCI       59</p> <p>2       information, our sort of accounting position at</p> <p>3       that time, our transactional detail at that time,</p> <p>4       it was much more difficult to identify specific</p> <p>5       receivables that could have been transferred. So</p> <p>6       it was more a matter of that these were much more</p> <p>7       easily identifiable, but yes, we did believe that</p> <p>8       they were transferable, or would become</p> <p>9       transferable. It was always understood that there</p> <p>10      was a regulatory approval that would be required</p> <p>11      but that they would become transferable.</p> <p>12      <b>Q. Did you have any discussions with</b></p> <p>13      <b>Mr. Lowitt as to whether transferring those</b></p> <p>14      <b>receivables was part of the deal with Barclays?</b></p> <p>15      MR. HUME: Objection, what receivables?</p> <p>16      <b>Q. The 15c3 receivables?</b></p> <p>17      A. I do recall talking to him about that,</p> <p>18      yes.</p> <p>19      <b>Q. What did he tell you?</b></p> <p>20      A. We were looking for potential other</p> <p>21      assets and so we were going to include this in the</p> <p>22      agreement.</p> <p>23      <b>Q. Do you know one way or the other whether</b></p> <p>24      <b>the 15c3 receivables were part of the asset</b></p> <p>25      <b>purchase agreement?</b></p>
Page 60	Page 61
<p>1       <b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>       <b>60</b></p> <p>2       A. I can't recall if they were part of the</p> <p>3       asset purchase agreement or some clarification</p> <p>4       letter.</p> <p>5       <b>Q. The parts of the asset purchase</b></p> <p>6       <b>agreement or the clarification letter that were</b></p> <p>7       <b>shown to you, do you recall whether they had any</b></p> <p>8       <b>reference to the 15c3 assets?</b></p> <p>9       A. I don't recall. I don't recall which.</p> <p>10      I do recall that there was in one or other of</p> <p>11      those documents a reference to that, to those</p> <p>12      assets.</p> <p>13      <b>Q. The other receivables you mentioned, the</b></p> <p>14      <b>derivatives receivables, could you describe what</b></p> <p>15      <b>you mean by derivative receivables?</b></p> <p>16      A. Yes. Particularly for LBI there were</p> <p>17      substantial margins posted at the exchanges, which</p> <p>18      were accounted for, essentially accounted for as</p> <p>19      receivables, and those are what I refer to as</p> <p>20      derivative receivables.</p> <p>21      <b>Q. Would an example of derivative</b></p> <p>22      <b>receivables be these types of receivables that</b></p> <p>23      <b>were posted with the OCC?</b></p> <p>24      MR. HUME. Objection to the form of the</p> <p>25      question. These type? Which type of receivables?</p>	<p>1       HIGHLY CONFIDENTIAL - PAOLO TONUCCI       61</p> <p>2       <b>Q. Derivative receivables?</b></p> <p>3       A. I would say that would be consistent</p> <p>4       with my understanding.</p> <p>5       <b>Q. And the OCC is the Options Clearing</b></p> <p>6       <b>Corp?</b></p> <p>7       A. That is correct.</p> <p>8       <b>Q. Do you recall in the bits and pieces of</b></p> <p>9       <b>the asset purchase agreement, the APA and the</b></p> <p>10      <b>clarification letter that was shown to you whether</b></p> <p>11      <b>those documents provided for derivatives</b></p> <p>12      <b>receivables to be transferred to Barclays?</b></p> <p>13      MR. HUME: Objection. You are asking</p> <p>14      this witness to give an opinion on a legal</p> <p>15      document that you have not shown him. He is not</p> <p>16      a lawyer and he said he was not a negotiator of</p> <p>17      the deal</p> <p>18      MR. TAMBE. You have an objection to</p> <p>19      foundation and form.</p> <p>20      MR. HUME: I am not just objecting to</p> <p>21      foundation It is an inappropriate, misleading</p> <p>22      question</p> <p>23      MR. TAMBE: Don't make speaking</p> <p>24      objections. Object to form, move on, we will get</p> <p>25      through this faster.</p>

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1	HIGHLY CONFIDENTIAL - PAOLO TONUCCI 62	1	HIGHLY CONFIDENTIAL - PAOLO TONUCCI 63
2	MR. HUME: It is not just an objection	2	A There was insufficient detail to be able
3	to form.	3	to confirm that, that that still existed at that
4	MR. TAMBE. Are you instructing him not	4	point in time.
5	to answer?	5	<b>Q. At some subsequent point in time was</b>
6	MR. HUME: I am objecting to	6	<b>a determination made as to those FX receivables?</b>
7	a misleading line of questioning.	7	A I don't know.
8	MR. TAMBE: Thank you.	8	<b>Q. Another category of receivables you</b>
9	Mr. Tonucci, do you have my question in	9	<b>identified were bank receivables?</b>
10	mind?	10	A. Yes.
11	(Read back)	11	<b>Q. Again, the same series of questions on</b>
12	A. I don't recall.	12	<b>the bank receivables; was a determination made on</b>
13	<b>Q. Another type of receivable you described</b>	13	<b>the 19th that those were transferable to Barclays?</b>
14	<b>before were FX receivables?</b>	14	A. On the 19th there was a determination
15	A. Um hum	15	made that it was too complicated and too uncertain
16	<b>Q. Did you identify any foreign exchange</b>	16	to be able to say whether those were transferable
17	<b>receivables that could be transferred to Barclays?</b>	17	<b>Q. And on some subsequent date after the</b>
18	A There was a receivable balance for	18	<b>19th was a determination made as to whether those</b>
19	forward settling foreign exchange on the LBI	19	<b>could be transferred?</b>
20	balance sheet.	20	A I don't know.
21	<b>Q. And the determination was that those</b>	21	<b>Q. You were in New York during this week,</b>
22	<b>receivables could be transferred to Barclays, is</b>	22	<b>correct?</b>
23	<b>that right?</b>	23	A. That is correct.
24	MR. HUME: Objection to the form,	24	<b>Q. Do you recall accepting your offer of</b>
25	objection to the vagueness of the word --	25	<b>employment at Barclays?</b>
Page 64		Page 65	
1	HIGHLY CONFIDENTIAL - PAOLO TONUCCI 64	1	HIGHLY CONFIDENTIAL - PAOLO TONUCCI 65
2	A. I do.	2	<b>Q. You were accepting an offer of</b>
3	<b>Q. When did you do that?</b>	3	<b>employment for Barclays, right?</b>
4	A. I believe it was 26 September.	4	A. Yes.
5	<b>Q. You sent an e-mail on the morning of the</b>	5	<b>Q. What offer were you accepting on</b>
6	<b>22nd accepting your offer, right?</b>	6	<b>Monday September 22 at 1:04 pm GMT?</b>
7	MR. HUME. Objection, lacks foundation.	7	A. I can't recall the details at that point
8	A. I can't remember.	8	but I believe that the offers went out over the
9	<b>Q. Do you recall about an hour after the</b>	9	weekend, but I don't recall the exact details of
10	<b>ink dried on the clarification letter you sent an</b>	10	it at that point. I recall the hard copy in more
11	<b>e-mail?</b>	11	detail I am not too sure when that was sent out
12	MR. HUME: Objection to form.	12	<b>Q. If I understand your answer, at some</b>
13	A I don't remember.	13	<b>point over the weekend of the 20th/21st you</b>
14	<b>Q. Let me show it to you.</b>	14	<b>received a soft copy of the offer?</b>
15	(Exhibit 137A marked for identification)	15	A Yes.
16	<b>I have handed you a one page document</b>	16	<b>Q. And at some point during the week of the</b>
17	<b>marked Exhibit 137A. Do you have that before you?</b>	17	<b>22nd you actually signed a hard copy?</b>
18	A. I do.	18	A. That is correct.
19	<b>Q. Do you recognize this as an e-mail that</b>	19	<b>Q. But you knew before the 20th that you</b>
20	<b>you sent to an e-mail box called "Accept Barclays</b>	20	<b>would be offered employment by Barclays, correct?</b>
21	<b>offer at Lehman.com"?</b>	21	MR. HUME: Objection.
22	A. Yes.	22	A. I knew on the evening of the 19th that
23	<b>Q. And the subject simply says: "I accept".</b>	23	I would receive an offer from Barclays
24	<b>Correct?</b>	24	<b>Q. Had you had any discussions with anyone</b>
25	A. Yes.	25	<b>prior to September 19 about receiving an offer</b>

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1	HIGHLY CONFIDENTIAL - PAOLO TONUCCI 66	1	HIGHLY CONFIDENTIAL - PAOLO TONUCCI 67
2	from Barclays?	2	Q. Did you try to get any assurance from
3	A. No.	3	him or anyone else about whether there was a place
4	Q. What was the communication you received	4	for you at Barclays?
5	on the evening of September 19 about an offer from	5	A. No.
6	Barclays?	6	Q. You knew he would be heading to
7	A. After the Lehman and the Barclays and	7	Barclays, right?
8	the other teams had gone to the bankruptcy court,	8	A. I didn't, no.
9	after the day's work had been completed and I was	9	Q. Did you know whether any of the folks
10	going to head home, and I had been up all night so	10	that you were working with at Lehman that week
11	I was exhausted, and so I am not too sure, I am	11	were going to be headed to Barclays?
12	not too sure of the exact time, before departing	12	A. I expected that there would be some that
13	for the day Ian Lowitt advised me that I would	13	were heading to Barclays but I was not sure of
14	receive an offer, and he gave me the general terms	14	exactly whom.
15	that I would likely be offered.	15	Q. Barclays was buying the North American
16	Q. When you say "the general terms", the	16	operations, correct?
17	general economic terms of the offer?	17	A. Correct.
18	A. The general economic terms, but I was	18	Q. And they needed people to run those
19	not sure of the position at that point.	19	operations?
20	Q. Prior to that September 19, had you had	20	A. Correct.
21	discussions with Ian about what your future held	21	Q. So your expectation was that some
22	for you?	22	significant number of Lehman folks would in fact
23	A. No.	23	get offers from Barclays?
24	Q. No discussions?	24	A. That is correct.
25	A. No.	25	Q. And you certainly hoped to be included
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1	HIGHLY CONFIDENTIAL - PAOLO TONUCCI 68	1	69
2	in that group?	2	
3	A. Yes, I think it is fair to say I hoped	3	
4	to be included.	4	
5		5	
6		6	
7		7	
8		8	
9		9	
10		10	
11		11	
12	REDACTED	12	REDACTED
13		13	
14		14	
15		15	
16		16	
17		17	
18		18	
19		19	
20		20	
21		21	
22		22	
23		23	MR. HUME: Sorry, I am unsure. We are
24		24	going to designate obviously any portion of the
25		25	transcript that relates to compensation highly

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<p>1       HIGHLY CONFIDENTIAL - PAOLO TONUCCI       70</p> <p>2       confidential. Is it understood we can do that</p> <p>3       after the deposition?</p> <p>4       MR. TAMBE: Yes, and I think the</p> <p>5       agreement that was reached at the Felder</p> <p>6       deposition we assume carries for all depositions.</p> <p>7       MR. HUME. For all designations we can</p> <p>8       do it later rather than during.</p> <p>9       MR. TAMBE: You can do it later. Let's</p> <p>10      just follow the Felder rule. I think it was that</p> <p>11      we were going to treat the entire transcript as</p> <p>12      highly confidential.</p> <p>13      MR. MAGUIRE: Treating the entire</p> <p>14      transcript as highly confidential for a week and</p> <p>15      make the designations within the week.</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20                                   REDACTED</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1       71</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12                                   REDACTED</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
Page 72	Page 73
<p>1       72</p> <p>2</p> <p>3</p> <p>4</p> <p>5                                   REDACTED</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11      -- --</p> <p>12      (Exhibit 139A marked for identification).</p> <p>13      Q. I have placed before you a 2-page</p> <p>14      document marked Exhibit 139A. Let me know when</p> <p>15      you have had a chance to review it.</p> <p>16      A. I have reviewed it, yes</p> <p>17      Q. A couple of questions about some of the</p> <p>18      names that appear on this e-mail chain. Some you</p> <p>19      have mentioned this morning but a couple of others</p> <p>20      I want to ask you about. David Aronow, what</p> <p>21      position did Mr. Aronow have?</p> <p>22      A. He is within the operations team.</p> <p>23      Q. At Lehman?</p> <p>24      A. At Lehman.</p> <p>25      Q. And he made the move to Barclays as</p>	<p>1       HIGHLY CONFIDENTIAL - PAOLO TONUCCI       73</p> <p>2       well?</p> <p>3       A. Yes.</p> <p>4       Q. John Palchynsky, what position did he</p> <p>5       have at Lehman?</p> <p>6       A. He was in the operations team.</p> <p>7       Q. Did he make the move to Barclays?</p> <p>8       A. Yes.</p> <p>9       Q. John Feraca. Was he in the operations</p> <p>10      team at Lehman as well?</p> <p>11      A. He was in the prime services team</p> <p>12      Q. Did he make the move to Barclays?</p> <p>13      A. Yes.</p> <p>14      Q. Monty Forrest, what was his position at</p> <p>15      Lehman?</p> <p>16      A. He was in the prime services team.</p> <p>17      Q. Did he make the move to Barclays?</p> <p>18      A. He did.</p> <p>19      Q. Neil Ullman, what was his position at</p> <p>20      Lehman?</p> <p>21      A. He was in the operations team.</p> <p>22      Q. Did he make the move to Barclays?</p> <p>23      A. He did.</p> <p>24      Q. Dan Fleming, you have mentioned before.</p> <p>25      Did he make the move to Barclays?</p>

Page 74	Page 75
<p>1       <b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>       74</p> <p>2       A. He did.</p> <p>3       <b>Q. Just a question about the e-mail address</b></p> <p>4       <b>for Mr. Fleming. It has in parentheses "TSY"</b></p> <p>5       <b>after it. Do you see that?</b></p> <p>6       A. Yes.</p> <p>7       <b>Q. Any understanding what that means?</b></p> <p>8       A. Treasury.</p> <p>9       <b>Q. And that was a designation used within</b></p> <p>10      <b>Lehman?</b></p> <p>11      A. I don't know. I think that the TSY</p> <p>12      designation is used where there may be more than</p> <p>13      one person, just to identify which one it is.</p> <p>14      <b>Q. Craig Jones, what was his position</b></p> <p>15      <b>within Lehman?</b></p> <p>16      A. He was in treasury.</p> <p>17      <b>Q. Did he make it over to Barclays?</b></p> <p>18      A. He did.</p> <p>19      <b>Q. Look at the top half of Exhibit 139A.</b></p> <p>20      <b>There is a message there from Mr. Palchynsky to</b></p> <p>21      <b>several people, including you. Do you see that?</b></p> <p>22      A. I do.</p> <p>23      <b>Q. He says in there: "Anyway, see you all</b></p> <p>24      <b>at BarCap". Do you see that?</b></p> <p>25      A. I do.</p>	<p>1       <b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>       75</p> <p>2       <b>Q. There is an e-mail dated September 19,</b></p> <p>3       <b>2008. Do you see that?</b></p> <p>4       A. I do.</p> <p>5       <b>Q. Around 6:28 pm, right?</b></p> <p>6       A. Yes.</p> <p>7       <b>Q. So was this the first that you had heard</b></p> <p>8       <b>about your employment at Barclays?</b></p> <p>9       A. I believe that I had heard perhaps an</p> <p>10      hour before that.</p> <p>11      <b>Q. Was this the first that you had heard</b></p> <p>12      <b>that all these other people were also going to be</b></p> <p>13      <b>going to Barclays?</b></p> <p>14      A. This is a relatively junior person in an</p> <p>15      operations area, who could have been speculating.</p> <p>16      It was not clear to me that all of these people</p> <p>17      were going to be moving over</p> <p>18      <b>Q. This chain of e-mails has a subject line</b></p> <p>19      <b>that says: "Urgent, tri unwind". Do you see that?</b></p> <p>20      A. I do</p> <p>21      <b>Q. And what was the "Urgent tri unwind"</b></p> <p>22      <b>about, if you recall?</b></p> <p>23      A. It was to do with the cash balance that</p> <p>24      was placed with JP Morgan on the night by Barclays</p> <p>25      on the night of the 18th, and was part of the</p>
Page 76	Page 77
<p>1       <b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>       76</p> <p>2       tri-party arrangement, and it was being unwound.</p> <p>3       <b>Q. And the collection of people on these</b></p> <p>4       <b>e-mails were involved in assisting with that</b></p> <p>5       <b>unwind?</b></p> <p>6       A. They were involved in the repo</p> <p>7       operations.</p> <p>8       <b>Q. So they would have dealt with that</b></p> <p>9       <b>unwind and other aspects of the repo?</b></p> <p>10      A. Yes.</p> <p>11      MR. TAMBE: Thank you. We will take</p> <p>12      a short break now.</p> <p>13      (Break from 8:55 to 9:14 am.).</p> <p>14      <b>Q. I am showing you a document previously</b></p> <p>15      <b>marked as Exhibit 19. Have you seen this document</b></p> <p>16      <b>before today, sir?</b></p> <p>17      A. I have.</p> <p>18      <b>Q. What do you understand it to be?</b></p> <p>19      MR. HUME: Objection to the form.</p> <p>20      A. It was the balance sheet that was I</p> <p>21      believe, you know, part of the negotiation for the</p> <p>22      sale to Barclays, so the estimated balance sheet.</p> <p>23      <b>Q. And the estimated balance sheet for what</b></p> <p>24      <b>entity?</b></p> <p>25      A. For the part of LBI that was being sold.</p>	<p>1       <b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>       77</p> <p>2       <b>Q. Do you recall if this is a document that</b></p> <p>3       <b>you saw during that week, the week</b></p> <p>4       <b>of September 15, 2008?</b></p> <p>5       A. Yes, I believe I saw it on the 16th.</p> <p>6       <b>Q. Do you know in connection with what</b></p> <p>7       <b>event or action did you see this document?</b></p> <p>8       A. In relation to the Barclays contemplated</p> <p>9       purchase.</p> <p>10      <b>Q. Who showed it to you?</b></p> <p>11      A. I think it was Ian Lowitt.</p> <p>12      <b>Q. Did you play any role in the preparation</b></p> <p>13      <b>of this document, Exhibit 19?</b></p> <p>14      A. I did not.</p> <p>15      <b>Q. We had earlier talked about the</b></p> <p>16      <b>\$5 billion discount. Do you know if the</b></p> <p>17      <b>\$5 billion discount was reflected in this</b></p> <p>18      <b>document, Exhibit 19?</b></p> <p>19      MR. HUME: Objection, lacks foundation</p> <p>20      A. I do not know.</p> <p>21      <b>Q. If you look under the "liabilities"</b></p> <p>22      <b>column, last two entries above the total are</b></p> <p>23      <b>titled "Cure PMT" and "Comp". Do you see that?</b></p> <p>24      A. I do.</p> <p>25      <b>Q. And there is a total of about four and</b></p>

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1           **HIGHLY CONFIDENTIAL - PAOLO TONUCCI**           78

2   a quarter billion dollars, do you see that?

3       A. I do.

4       **Q. Did you have any understanding during**

5   the week of the 15th as to what those items were?

6       A. No, not really.

7       **Q. Do you have any understanding today**

8   about what those items were?

9       A. I can read that the compensation number

10 is compensation and I am not sure about the cure

11 payment.

12       **Q. At any time from September 15th to the**

13 present have you had discussions with anyone,

14 other than counsel, about the cure payment and

15 comp liabilities assumed by Barclays?

16       A. No, I have not.

17       **Q. Going up to the assets side of this**

18 balance sheet, there is a sub-total of

19 \$62.7 billion for assets. Do you see that?

20       A. I do.

21       **Q. Was that your understanding of the**

22 assets available to LBI on or about September 15

23 or September 16 of 2008?

24       MR. HUME. Objection, lacks foundation.

25 Are you asking his understanding at that time or

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1           **HIGHLY CONFIDENTIAL - PAOLO TONUCCI**           80

2       **Q. The derivatives item on this Exhibit 19,**

3 do you have an understanding as to what that was

4 comprised of?

5       A. I mean, the derivative balance is on

6 both sides, the assets and the liabilities, and I

7 am not sure exactly what went into either of

8 those.

9       **Q. You had talked earlier about being**

10 involved in preparing an opening balance sheet for

11 Barclays. Do you recall that?

12       A. I do.

13       **Q. Did you use Exhibit 19 or a document**

14 like Exhibit 19 as a starting point for that work

15 that you did?

16       MR. HUME. Objection to the form.

17       A. No, I did not.

18       **Q. What process did you follow in preparing**

19 the opening balance sheet?

20       A. In reconstructing the balance sheet we

21 used the transactions which we understood to have

22 settled or be in the process of settling.

23       **Q. And by "the transactions" you mean the**

24 transactions pursuant to the asset purchase

25 agreement, the clarification letter?

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1           **HIGHLY CONFIDENTIAL - PAOLO TONUCCI**           79

2 the assets at that time?

3       **Q. His understanding of assets at that**

4 time?

5       A. I would have expected the assets to be

6 of that order.

7       **Q. And that is something you would have**

8 tracked in connection with your liquidity

9 management function, correct?

10       A. Not in this form. This is sort of an

11 accounting representation, and so it was not so

12 relevant to funding, which is slightly different,

13 a different way of viewing the balance sheet

14       **Q. But you would want to know what the**

15 aggregate amount of Government and agency paper

16 that Lehman had?

17       A. Yes.

18       **Q. Because that is what you would be**

19 pledging as collateral against --

20       A. That is right.

21       **Q. You would care about what commercial**

22 paper you had?

23       A. That is right.

24       **Q. For the same reasons?**

25       A. That is right

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1           **HIGHLY CONFIDENTIAL - PAOLO TONUCCI**           81

2       A. That is right.

3       **Q. I have had placed before you a document**

4 or I have placed before you a document marked

5 Exhibit 60B. Take a moment to look at those

6 2 pages, let me know when you are done.

7       A. Yes.

8       **Q. Are you familiar with that document?**

9       A. No. It is the first time I have seen

10 it.

11       **Q. Take a moment to read the cover e-mail**

12 and the spreadsheet that is attached and I am

13 going to ask you a couple of questions about the

14 information that is contained in that document,

15 and let me know when you are done.

16       A. Okay.

17       **Q. Turning to the attachment to the cover**

18 e-mail, do you have a general understanding of the

19 nature of the information that is contained on

20 that spreadsheet that is the second page of

21 Exhibit 60B?

22       A. Yes, a general understanding.

23       MR. HUME. May I just ask, the e-mail

24 says it is September 18, 2008. The attachment is

25 dated March 27, 2009.

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1        **HIGHLY CONFIDENTIAL - PAOLO TONUCCI**        82

2        MR. TAMBE: I think the attachment is

3        a native format document so when you print it out

4        it prints out the date on which it was printed

5        out. That is just my guess.

6        MR. HUME: This is not Bates numbered.

7        MR. TAMBE: No, it is not.

8        MR. HUME: So I am objecting to the form

9        of the exhibit.

10       MR. TAMBE: Okay.

11       MR. HUME: And I am reserving all rights

12       to object to the authenticity of the exhibit.

13       MR. TAMBE: Do you have my question in

14       mind? Probably not.

15       A: I don't

16       **Q. We will have it read back.**

17       **(Previous Question and Answer Read back)**

18       **Looking down this attachment to Exhibit 60B and**

19       **the left-hand column under the heading "Program", there is**

20       **a series of entries with the title "TSLF". Do you see that?**

21       A: I do.

22       **Q. Do you recognize that as a Fed funding**

23       **program?**

24       A: I do.

25       **Q. And that the term security is lending**

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1       **HIGHLY CONFIDENTIAL - PAOLO TONUCCI**        84

2       MR. HUME: What grand total line, which

3       line?

4       MR. TAMBE: There is only one grand

5       total line.

6       MR. HUME: At the bottom?

7       **Q. Yes. Par amount, \$43 billion and**

8       **change. Do you see that?**

9       A: Yes.

10       **Q. Do you have an understanding as to what**

11       **that is a reference to?**

12       A: I do.

13       **Q. Okay, what?**

14       A: Par amount of the securities.

15       **Q. So that would be the par amount of**

16       **securities pledged?**

17       A: That is correct.

18       **Q. The next column over is titled "Current**

19       **market". Do you see that?**

20       A: I do.

21       **Q. And that carries a value at the bottom,**

22       **the grand total row of \$49.7 billion. Do you see**

23       **that?**

24       A: I do.

25       **Q. What is your understanding of what that**

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1       **HIGHLY CONFIDENTIAL - PAOLO TONUCCI**        83

2       facility?

3       A: That is correct

4       **Q. There is a total associated with that,**

5       **do you see that?**

6       A: I do.

7       **Q. The next item is "PDCF", and that is the**

8       **prime dealer credit facility, is that right?**

9       A: Primary dealers credit facility.

10       **Q. Primary dealers, and the next item is**

11       **OMO, and that is open market operations?**

12       A: That is correct

13       **Q. And all three of these items, TSLF, PDCF**

14       **and OMO are Fed funding facilities that were**

15       **available back in September 2008?**

16       A: That is correct

17       **Q. Looking at the amounts, the grand total**

18       **amounts at the bottom, is it your recollection**

19       **that that was roughly the amount of the Fed**

20       **facility borrowing as of September 18, 2008?**

21       MR. HUME: Objection to the form.

22       A: Yes, that sounds about right

23       **Q. I would like your understanding of the**

24       **different values that appear in the grand total**

25       **line or row.**

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1       **HIGHLY CONFIDENTIAL - PAOLO TONUCCI**        85

2       **column and that grand total represents?**

3       MR. HUME: Objection, lacks foundation.

4       A: I could only read what it says, which is

5       "current market", and I would assume that is the

6       current market valuation as attributed by whoever

7       is preparing this document

8       **Q. And then the next two columns are**

9       **"Paydown amount" and "Anticipated prefunding**

10       **dollar amount". Do you have an understanding of**

11       **what these terms means?**

12       MR. HUME: Objection. I believe you are

13       asking the witness to speculate about a document

14       he has not seen before.

15       **Q. Managing liquid, you know what paydown**

16       **amounts are?**

17       A: It is actually not a term that I would

18       typically use.

19       **Q. Any understanding what that term means?**

20       A: I assume that that is the cash component

21       of the transaction.

22       **Q. And the anticipated prefunding dollar**

23       **amount, is that a term you are familiar with?**

24       A: No.

25       **Q. Not a term you use?**

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1	<b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI 86</b>	1	<b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI 87</b>
2	A. No	2	A. Yes.
3	<b>Q. Any idea what that means?</b>	3	<b>Q. Martin Kelly?</b>
4	MR. HUME: Objection, calls for	4	A. Yes.
5	speculation.	5	<b>Q. You are shown as a cc on that?</b>
6	A. No, not really	6	A. Yes.
7	MR. HUME: He is asking you to	7	<b>Q. Do you understand the information that</b>
8	speculate.	8	<b>is contained on page 2 of Exhibit 140A?</b>
9	<b>Q. Just in broad dollar terms, was it your</b>	9	A. Not entirely sure I do.
10	<b>understanding that the amount of the Fed facility</b>	10	<b>Q. Do you recall there being a discussion</b>
11	<b>on or about September 18, 2008, was a funding of</b>	11	<b>or an analysis during that week of September 15</b>
12	<b>about \$44 billion or \$45 billion against a market</b>	12	<b>about assets available to be transferred by LBI to</b>
13	<b>value of collateral of about \$50 billion?</b>	13	<b>Barclays?</b>
14	A. Yes, that sounds right.	14	A. I do, yes.
15	(Exhibit 140A marked for identification)	15	<b>Q. What do you recall about that analysis</b>
16	<b>Q. I have had placed before you a document</b>	16	<b>or discussion?</b>
17	<b>marked Exhibit 140A, a 3-page document. Take</b>	17	A. That obviously we were trying to be as
18	<b>a moment to look at it, let me know when you are</b>	18	specific as possible about not just the assets
19	<b>done. You done?</b>	19	that were on the balance sheet but actually what
20	A. I have read through it.	20	was going to be available for transfer. The
21	<b>Q. Do you recognize that document?</b>	21	difference between the balance sheet from a sort
22	A. Actually, I can't recall going through	22	of accounting or GAPP perspective from a funding
23	this, no.	23	perspective, was really one of granularity, in
24	<b>Q. Do you see the cover e-mail is an e-mail</b>	24	terms of what has settled and exactly where the
25	<b>from Mr. Robert Azerad?</b>	25	securities are that are in the repo agreements or
Page 88		Page 89	
1	<b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI 88</b>	1	<b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI 89</b>
2	reverse repo agreements. So the effort was to try	2	adjusted assets of 72.6 billion.
3	and establish what was exactly available for	3	MR. HUME. Before you asked if it was
4	transfer.	4	a balance sheet of LBI.
5	<b>Q. Is it your understanding that the assets</b>	5	MR. TAMBE: The record is what it is.
6	<b>that were listed on the LBI balance sheet, not all</b>	6	You have an objection to make, make it, let's move
7	<b>of those ultimately were transferable to Barclays?</b>	7	on.
8	A. Yes.	8	MR. HUME: I think the record is
9	<b>Q. We had seen earlier in Exhibit 19, which</b>	9	misleading now. You asked a question that the
10	<b>I think is still before you, if you can just turn</b>	10	witness did not understand.
11	<b>to that --</b>	11	MR. TAMBE. Unless you are challenging
12	A. Yes.	12	the witness I am not sure what that objection is
13	<b>Q. This is a balance sheet I think you told</b>	13	all about.
14	<b>us of LBI as of September 16, 2008, correct?</b>	14	Let's go back to the Exhibit 19, LBI
15	A. Yes 15th, I think, I assume.	15	balance sheet adjusted total assets 72.65 billion
16	<b>Q. And that has a total adjusted assets or</b>	16	Correct.
17	<b>adjusted total assets of 72.6 billion. Do you see</b>	17	A. I can see that, yes
18	<b>that?</b>	18	<b>Q. And is it your recollection that over</b>
19	MR. HUME: Objection. Did you ask	19	<b>some -- over the course of that week, the week</b>
20	whether this Exhibit 19 was a balance sheet for	20	<b>of September 15, the assets of LBI available for</b>
21	LBI.	21	<b>transfer were less than 72.65 billion?</b>
22	MR. TAMBE: Yes?	22	A. Yes.
23	MR. HUME: Was that the question?	23	<b>Q. It went down to a number of about</b>
24	MR. TAMBE: That was not the question,	24	<b>50 billion, correct?</b>
25	no. The question was whether it as had a total	25	A. I am not sure it ever went as low as



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1	HIGHLY CONFIDENTIAL - PAOLO TONUCCI 90	1	HIGHLY CONFIDENTIAL - PAOLO TONUCCI 91
2	that, but anyway it certainly went down.	2	a representation of the inventory which is both
3	<b>Q. How low did it go in your recollection?</b>	3	reversed in and repo'd out.
4	A. Somewhere between 50 and 60 billion	4	<b>Q. If you can just explain what a matched</b>
5	<b>Q. And part of the reason for that change</b>	5	<b>book is? It is a phrase I have seen in some of</b>
6	<b>from 72 to the 50 to 60 billion range is assets</b>	6	<b>the e-mails. I want to get a better understanding</b>
7	<b>that could not be transferred to Barclays,</b>	7	<b>of what that is.</b>
8	<b>correct?</b>	8	A. The matched book is a financing business
9	MR. HUME: Objection, lacks foundation.	9	where securities are financed on behalf of
10	A. Yes, that is right. I mean, insofar as	10	customers and the matching that is on the other
11	they were transactions that were being settled	11	side, they are financed to the street or with
12	elsewhere, and so the securities would not be	12	other customers, so it is an activity where the
13	available for transfer to Barclays	13	financing should be matched.
14	<b>Q. Going back to Exhibit 140A, the 3-pager,</b>	14	<b>Q. And presumably Lehman are in some spread</b>
15	<b>on the third page of that exhibit, there is an</b>	15	<b>in the course of this matched activity?</b>
16	<b>analysis set forth. Do you see that?</b>	16	A. It should, yes
17	A. I do	17	<b>Q. During the course of this week</b>
18	<b>Q. Do you have an understanding of what</b>	18	<b>of September 15 was the matched book reduced down</b>
19	<b>that analysis is?</b>	19	<b>effectively to zero?</b>
20	A. General, yes.	20	A. As close as possible to zero.
21	<b>Q. Generally, could you tell us what that</b>	21	<b>Q. Were you involved during this time</b>
22	<b>analysis is?</b>	22	<b>period, September 18, September 19, in identifying</b>
23	A. It is a summarization of the inventory	23	<b>or helping to identify those assets of LBI that</b>
24	which has been reversed in from other entities or	24	<b>would be available for transfer to Barclays?</b>
25	repo'd out. The LBI proprietary matched book is	25	A. Yes, particularly in the sort of
Page 92		Page 93	
1	HIGHLY CONFIDENTIAL - PAOLO TONUCCI 92	1	HIGHLY CONFIDENTIAL - PAOLO TONUCCI 93
2	18th/19th period.	2	A. Just any of the fixed income for
3	<b>Q. And Mr. Azerad was involved in that</b>	3	example, any of the trading businesses.
4	<b>process as well?</b>	4	<b>Q. So fixed income was a business unit that</b>
5	A. Yes.	5	<b>he would oversee?</b>
6	<b>Q. Was Mr. Martin Kelly involved in that as</b>	6	A. Right. I would think of Gerry as being
7	<b>well?</b>	7	the management accountant and Martin being the
8	A. Yes.	8	entity accountant, if that makes any sense
9	<b>Q. What was Mr. Kelly's position?</b>	9	<b>Q. Not entirely, but that is fine. We will</b>
10	A. Martin was the financial controller so	10	<b>move on. Francis Pearn, P-E-A-R-N?</b>
11	he was the accounting -- he was essentially the	11	A. Yes.
12	accountant for the group, chief accountant for the	12	<b>Q. Who was Francis?</b>
13	group.	13	A. He worked for Gerry.
14	<b>Q. Your co-equal or your subordinate?</b>	14	<b>Q. Were Gerry and Francis involved in this</b>
15	A. We were both direct reports to the CFO.	15	<b>process we talked about, identifying the assets of</b>
16	<b>Q. Gerry Reilly, Gerard Reilly, what was</b>	16	<b>LBI that were in fact transferable to Barclays?</b>
17	<b>his position?</b>	17	A. They were, yes.
18	A. He was the product controller, the head	18	(Exhibit 141A marked for identification)
19	of products control, which is really the business	19	<b>Q. I have handed you an exhibit marked</b>
20	CFO, business units' CFO.	20	<b>Exhibit 141A, which is a cover e-mail with</b>
21	<b>Q. Which business units?</b>	21	<b>a spreadsheet attached to it. If you could</b>
22	A. He actually oversaw all of the business	22	<b>generally look at the cover e-mail and the</b>
23	units.	23	<b>spreadsheet attached, I will ask you some general</b>
24	<b>Q. Give me a description of what you would</b>	24	<b>questions and then maybe some specific ones about</b>
25	<b>consider a business unit?</b>	25	<b>the spreadsheet. Just let me know when you are</b>

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1	HIGHLY CONFIDENTIAL - PAOLO TONUCCI 94	1	HIGHLY CONFIDENTIAL - PAOLO TONUCCI 95
2	done.	2	is entered into that system?
3	A. Okay.	3	A. No.
4	Q. Starting with the cover e-mail, reading	4	Q. Okay. Describe it?
5	the chain from the bottom up, do you recognize	5	A. Market data is received from other
6	that as an e-mail sent to you from Mr. Hraska?	6	systems. GFS is just an aggregation tool, so
7	A. I do.	7	would source data from settlement systems or from
8	Q. Just some terminology I want to get your	8	other pricing sources and apply that to the
9	understanding on. Mr. Hraska asks you, says:	9	inventory positions or collateral positions.
10	"We do not have MV of DTC yet but are working	10	Q. So if Lehman has a collection of
11	on it".	11	mortgage backed securities, those are valued by
12	Is that a reference to market value of	12	the traders at Lehman on some regular basis, is
13	DTC?	13	that right?
14	A. Correct.	14	A. That is correct.
15	Q. And DTC is?	15	Q. And those values get pulled into GFS
16	A. DTC is the Depository Clearing	16	automatically, is that correct?
17	Corporation.	17	A. That is correct.
18	Q. The next line, there is a reference to	18	Q. So the Lehman traders would go in and
19	"GFS". What is that a reference to?	19	ascribe values to those securities, right?
20	A. It is a system that was used to collate	20	A. That is correct.
21	assets and financing information called the Global	21	Q. And GFS, do you have to run a GFS
22	Financing System	22	program or does GFS automatically update itself
23	Q. That is a system at Lehman?	23	when new values are entered for particular
24	A. That is correct.	24	collateral?
25	Q. And market value data about securities	25	A. It runs on an overnight basis so it
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1	HIGHLY CONFIDENTIAL - PAOLO TONUCCI 96	1	HIGHLY CONFIDENTIAL - PAOLO TONUCCI 97
2	should pick up all of the most current	2	e-mail, Exhibit 141A. Are you generally familiar
3	information.	3	with the format of this spreadsheet?
4	Q. So if you wanted to track the value	4	MR. HUME Object to the form
5	ascribed by Lehman to a particular CUSIP over the	5	A. Generally.
6	course of that week, September 15 through 22nd, if	6	Q. It is a kind of spreadsheet that was
7	I queried the GFS system, it could give me a daily	7	prepared at Lehman from time to time, is that
8	valuation of that CUSIP?	8	right?
9	A. I have no idea	9	A. That is correct.
10	Q. Who would know the answer to that?	10	Q. I want to get an understanding of some
11	A. That is a technological question on data	11	of the column headings, what your understanding is
12	storage and retrieval, so I would speak to someone	12	of what they mean. Let's use the column title, so
13	in the technology department	13	column A, on the first page of the spreadsheet has
14	Q. In terms of figuring out how much money	14	a code "PR underscore space ID". Do you see that?
15	Lehman could borrow on any day, would you query	15	A. Yes.
16	the GFS system for values?	16	Q. What is your understanding of what that
17	A. Yes.	17	means?
18	Q. Who would do that on your behalf? Would	18	A. It is an identifier.
19	you do that yourself?	19	Q. A Lehman identifier?
20	A. No.	20	A. I believe so.
21	Q. Who would do that?	21	Q. The next column is "CUSIP", and that is
22	A. Someone within my team, someone junior	22	the security identifier, is that right?
23	to Robert generally.	23	A. That is correct.
24	Q. I just want to understand a little about	24	Q. The next, column C, is "LB underscore
25	this spreadsheet that is attached to this cover	25	space rating". Do you see that?

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1	HIGHLY CONFIDENTIAL - PAOLO TONUCCI 98	1	HIGHLY CONFIDENTIAL - PAOLO TONUCCI 99
2	A. I do.	2	generally the number of shares.
3	Q. And what is that a reference to?	3	Q. Okay, and for fixed income securities
4	A. I think that is an amalgum rating,	4	the quantity column would be the principal then
5	default rating from -- for I guess a Lehman	5	outstanding?
6	assigned default rating.	6	A. Yes.
7	Q. Columns D, E and F are external rating	7	Q. The next column?
8	agency ratings, is that right?	8	MR. HUME: Did you finish your answer?
9	A. That is correct	9	A. I was going to say it is not necessarily
10	Q. And the next column, G, is titled "Long	10	the principal outstanding on the security It is
11	underscore space description". Do you see that?	11	the principal balance held by or owned by the
12	A. I do.	12	entity.
13	Q. And that is just a description of the	13	Q. Understood, thank you. Column I?
14	security?	14	A. Yes.
15	A. Correct.	15	Q. "Price". Do you have an as to what that
16	Q. Turn over to the next page, 10320368,	16	column is?
17	column H, that is just a quantity, "QTY"?	17	A. That is the price attributed to the
18	A. Correct.	18	security.
19	Q. And quantity in this setting means what?	19	Q. If you look down that column, on this
20	A. It means -- I am not sure if they are	20	particular page 10320368, you will see a lot of
21	equity securities but for fixed income securities	21	entries that are less than one, so it is
22	it means the notional or principal amounts and	22	zero-point something. What is the pricing
23	for -- and the principal, notional or nominal are	23	convention that you think is being used here?
24	all somewhat interchangeable terms for fixed	24	MR. HUME: Objection, lacks foundation.
25	income securities, and for equity securities it is	25	A. I don't know
Page 100		Page 101	
1	HIGHLY CONFIDENTIAL - PAOLO TONUCCI 100	1	HIGHLY CONFIDENTIAL - PAOLO TONUCCI 101
2	Q. Generally what pricing convention would	2	systems used at Lehman.
3	you use in pricing securities in the Lehman	3	Q. And then column K is titled "MV", and
4	system?	4	that is market value, correct?
5	MR. HUME: Objection, the witness has	5	A. That is correct.
6	not testified that he prices any securities.	6	Q. The e-mail on page 1 of Exhibit 141A,
7	A. I don't know what the pricing convention	7	these are all e-mails dated September 19, 2008.
8	is.	8	Do you see that?
9	Q. Next column J: "Price underscore space	9	A. I do.
10	source".	10	Q. Do you recall preparing a spreadsheet
11	A. Yes	11	with market valuations for Barclays on the morning
12	Q. And there is a series of abbreviations	12	of September 19, 2008?
13	below in that column. The first one says "TMS"?	13	MR. HUME: Objection to form.
14	A. Yes	14	A. I don't remember preparing that for
15	Q. Do you have an understanding of what TMS	15	Barclays, no.
16	is?	16	Q. Do you remember preparing that period on
17	A. It is a settlement system	17	the morning of --
18	Q. There is a series of entries titled	18	A. I do remember preparing a summary of the
19	"MTS", what is that?	19	repo transaction and the values that we saw.
20	A. It is a settlement system.	20	(Exhibit 142A marked for identification)
21	Q. These are both Lehman settlement	21	Q. Sir, I have placed before you a document
22	systems?	22	marked Exhibit 142A. It has two initial pages
23	A. I don't know if they are Lehman	23	which are e-mails and then a spreadsheet attached
24	proprietary systems or whether they are street	24	to it. Take a moment to look at the document and
25	wide settlement systems but they are settlement	25	let me know when you are done, and I will have

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1	<b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI 102</b>	1	<b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI 103</b>
2	questions for you similar to the questions I asked	2	<b>Q. What is your recollection about that</b>
3	you about 141A.	3	<b>process of preparing this inventory adjustment?</b>
4	MR. HUME: I am just going to register	4	A. We were trying to identify the
5	an objection on the record to the extent that the	5	securities in the repo transaction.
6	first e-mail in the chain may be privileged and we	6	<b>Q. The repo that had occurred on the night</b>
7	reserve our rights to claw back anything that is	7	<b>of the 18th, correct?</b>
8	privileged.	8	A. That is correct.
9	<b>Q. Are you done?</b>	9	<b>Q. And the file that you were forwarding,</b>
10	A. Yes.	10	<b>"inventory adjustments.xls", would you have</b>
11	<b>Q. You will see this e-mail chain starts on</b>	11	<b>prepared that file?</b>
12	<b>the second page of Exhibit 142A with an e-mail</b>	12	A. I think that Robert Azerad prepared it
13	<b>from you to Gerry Reilly?</b>	13	but I cannot be sure.
14	A. Yes.	14	<b>Q. You were involved in the preparation of</b>
15	<b>Q. And the file you are sending him with</b>	15	<b>the file?</b>
16	<b>the e-mail is titled "Inventory Adjustments.xls"</b>	16	A. Yes, in the reviewing.
17	<b>do you see that?</b>	17	<b>Q. For what purpose were you reviewing the</b>
18	A. Yes.	18	<b>inventory adjustment file?</b>
19	<b>Q. This is a series of e-mails on pages one</b>	19	A. I was reviewing it to make sure that it
20	<b>and two, again dated Friday September 19, 2008.</b>	20	made sense and looked accurate.
21	<b>Do you see that?</b>	21	<b>Q. Just going through the column headings</b>
22	A. Yes	22	<b>so I understand what these column headings are,</b>
23	<b>Q. Do you recall preparing an inventory</b>	23	<b>starting with the third page of the exhibit, last</b>
24	<b>adjustment file on September 19?</b>	24	<b>four digits 5049 on the Bates number, do you see</b>
25	A. Yes.	25	<b>that?</b>
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1	<b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI 104</b>	1	<b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI 105</b>
2	A. Yes.	2	A. Yes, it is the cost centre attached to
3	<b>Q. So starting with column A, "Account",</b>	3	the trading book.
4	<b>and there is a series of codes that appear in that</b>	4	<b>Q. The next column over, F, is "Lead</b>
5	<b>column. What is your understanding of what</b>	5	<b>account"?</b>
6	<b>information is contained in that column?</b>	6	A. Yes.
7	A. I think they are trading accounts.	7	<b>Q. What is that a reference to?</b>
8	<b>Q. These are trading accounts at Lehman?</b>	8	A. I think that is just where there is
9	A. Yes.	9	trading book roll-ups, so it means that you have
10	<b>Q. Next column B, "Account name", the name</b>	10	different layers of trading accounts and then they
11	<b>of the trading account, I take it?</b>	11	can aggregate into a larger more aggregated
12	A. Yes.	12	account.
13	<b>Q. The next column is "Adjusted flag". Do</b>	13	<b>Q. Next column over, G, is "Trader name".</b>
14	<b>you see that?</b>	14	<b>then you go over to "DBS entity", column H. What</b>
15	A. I do.	15	<b>is that?</b>
16	<b>Q. What is that a reference to?</b>	16	A. DBS was the general ledger system, so
17	A. I don't know	17	the entity was the annotation for or should have
18	<b>Q. Next column over, "Adjustment, [ADJ]</b>	18	been the annotation for the DBS entity.
19	<b>comment." Do you see that?</b>	19	<b>Q. What does DBS stand for?</b>
20	A. Yes	20	A. I don't know.
21	<b>Q. Do you have an understanding what that</b>	21	<b>Q. All right. The next page, page 5050</b>
22	<b>means?</b>	22	<b>last digits, there is a series of columns for</b>
23	A. No.	23	<b>division, region and then it says "BPM level zero,</b>
24	<b>Q. Next column over, E, "Cost centre", do</b>	24	<b>one and two". Do you see those columns?</b>
25	<b>you have any understanding what that means?</b>	25	A. Yes.

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<p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 106</p> <p>2 Q. What does BPM stand for?</p> <p>3 A Business performance measurement.</p> <p>4 Q. Next column, "Real world Cusip". That</p> <p>5 is the security identifier?</p> <p>6 A. Correct</p> <p>7 Q. Turn to page 5051. First column is</p> <p>8 "ISIN", again an identifier for the security,</p> <p>9 correct?</p> <p>10 A. Correct</p> <p>11 Q. "Q" is "Product". There is a series of</p> <p>12 codes that appear there. Do you have an</p> <p>13 understanding of what that column is?</p> <p>14 A. No</p> <p>15 Q. Then you have columns for product name,</p> <p>16 coupon, maturity date, coupon rate, source system.</p> <p>17 Let's go over to page 52.</p> <p>18 A. Yes</p> <p>19 Q. There is a column entitled "W", "Trade</p> <p>20 date position". What is your understanding of</p> <p>21 what information is contained in that column?</p> <p>22 A. The trade date position is a position</p> <p>23 for accounting purposes, which should represent</p> <p>24 what your ownership interest is. It may not</p> <p>25 correspond to the actual settled position but, for</p>	<p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 107</p> <p>2 example, if you buy some shares, if you were to</p> <p>3 buy some shares today then you would record the</p> <p>4 fact that you have an economic interest, an</p> <p>5 economic exposure in those shares, but you may not</p> <p>6 pay for them or settle those for a few days, but</p> <p>7 your economic interest and exposure is the trade</p> <p>8 date position.</p> <p>9 Q. Then you have columns X and Y for clean</p> <p>10 market price and dirty market price. Do you see</p> <p>11 that?</p> <p>12 A. I do.</p> <p>13 Q. Could you briefly describe what clean</p> <p>14 market price and dirty market price is?</p> <p>15 A. Clean market price is the trader price</p> <p>16 exclusive of the accrued coupon. The dirty market</p> <p>17 price is the traded price inclusive of the accrued</p> <p>18 coupon.</p> <p>19 Q. Column Z is "Gross long inventory TD at</p> <p>20 MV"?</p> <p>21 A. Yes.</p> <p>22 Q. What is TD at MV?</p> <p>23 A. Trade date at market value.</p> <p>24 Q. And that calculation is done using clean</p> <p>25 market price, the dirty market price or neither?</p>
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<p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 108</p> <p>2 A. I am not sure.</p> <p>3 Q. The next column over, "Long Intraco</p> <p>4 Netdown TD at MV". Do you have an understanding</p> <p>5 as to that column, column Z?</p> <p>6 A. Column Z is the gross long inventory TD</p> <p>7 at MV</p> <p>8 Q. I am sorry, column AA, sorry: "Long</p> <p>9 Intraco Netdown TD at MV."</p> <p>10 A. I actually think that should say --</p> <p>11 Q. "Intraco"?</p> <p>12 A. "Intraco Netdown", which means that</p> <p>13 there may be trading books that are both long and</p> <p>14 short, and this is the first of the netdowns to</p> <p>15 reflect offsetting positions.</p> <p>16 Q. Then you have a net long column, AB, and</p> <p>17 that is just a net long position, is that right?</p> <p>18 A. That is right.</p> <p>19 Q. And then you have a series of columns,</p> <p>20 AC, AD. Over on to the next page, 5053.</p> <p>21 A. Yes</p> <p>22 Q. AE, which deals with short positions,</p> <p>23 correct?</p> <p>24 A. That is right</p> <p>25 Q. Then you have a column AF, "B/S summary</p>	<p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 109</p> <p>2 total"?</p> <p>3 A. Yes</p> <p>4 Q. What is that? Is that the buy/sell?</p> <p>5 A. No, balance sheet summary.</p> <p>6 Q. And then AG is balance sheet usage?</p> <p>7 A. Yes.</p> <p>8 Q. The prices that appear in X and Y, the</p> <p>9 clean market price and the dirty market price,</p> <p>10 with respect to fixed income securities, would</p> <p>11 those be observed trading prices or would those</p> <p>12 also include indicative or pricing assumptions by</p> <p>13 traders at Lehman?</p> <p>14 MR. HUME: Objection, lacks foundation.</p> <p>15 Witness has testified he was not involved in</p> <p>16 pricing.</p> <p>17 A. They may be observable. They would</p> <p>18 probably be a combination of exchange traded,</p> <p>19 which are observable on assets at closing prices</p> <p>20 and trader determined prices and trader input</p> <p>21 prices</p> <p>22 Q. Were you aware of any process</p> <p>23 on September 19, 2008, where traders at Lehman</p> <p>24 were marking down positions on that date?</p> <p>25 A. I was not, no</p>

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<p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 110</p> <p>2 (Exhibit 143A marked for identification)</p> <p>3 <b>Q. I have placed before you a one paged</b></p> <p>4 <b>document marked Exhibit 143A.</b></p> <p>5 A. Yes.</p> <p>6 <b>Q. Do you see that is an e-mail sent by you</b></p> <p>7 <b>to various people at Barclays?</b></p> <p>8 A I do.</p> <p>9 <b>Q. Sent on Friday, September 19, on or</b></p> <p>10 <b>about -- looks like noon Eastern time?</b></p> <p>11 A. Yes</p> <p>12 <b>Q. And you are sending over a file</b></p> <p>13 <b>captioned "BarCap collateral.xls". Do you see</b></p> <p>14 <b>that?</b></p> <p>15 A Yes</p> <p>16 <b>Q. And you state in the body of your e-mail</b></p> <p>17 <b>that "This is using our prices". Do you see that?</b></p> <p>18 A Yes, I do.</p> <p>19 <b>Q. That means using the Lehman prices,</b></p> <p>20 <b>right?</b></p> <p>21 A. That is right.</p> <p>22 <b>Q. And you state that: "It shows less than</b></p> <p>23 <b>BONY file so we may be being conservative." Do you</b></p> <p>24 <b>see that?</b></p> <p>25 A. I do.</p>	<p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 111</p> <p>2 <b>Q. And your reference to BONY file is</b></p> <p>3 <b>a reference to the BONY prices, correct?</b></p> <p>4 A. Right.</p> <p>5 <b>Q. The Bank of New York prices, correct?</b></p> <p>6 A. Yes.</p> <p>7 <b>Q. And Bank of New York was the tri-party</b></p> <p>8 <b>provider on the BarCap tri-party agreement,</b></p> <p>9 <b>correct?</b></p> <p>10 A. Yes.</p> <p>11 <b>Q. Do you recall Barclays requesting you to</b></p> <p>12 <b>provide the Lehman marks as separate from the BONY</b></p> <p>13 <b>prices?</b></p> <p>14 A. I don't, no.</p> <p>15 <b>Q. Do you recall any discussions on</b></p> <p>16 <b>Friday September 19 about the BONY prices versus</b></p> <p>17 <b>the Lehman prices, a discussion with Barclays?</b></p> <p>18 A. No, not with Barclays. I do recall --</p> <p>19 there was obviously a tremendous amount of</p> <p>20 complexity in this transaction and the repo</p> <p>21 transaction in particular was very complicated,</p> <p>22 and all that we were trying to do was to establish</p> <p>23 the accuracy of the positions that have</p> <p>24 transferred over and some reference in terms of</p> <p>25 valuations. We had asked for details from</p>
Page 112	Page 113
<p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 112</p> <p>2 Barclays from their BONY file because they would</p> <p>3 have received an electronic version of the</p> <p>4 tri-party reporting from their tri-party provider,</p> <p>5 so we were just going through the process of</p> <p>6 trying to identify any discrepancies or problems;</p> <p>7 discrepancies in the quantity, problems in terms</p> <p>8 of differences in the assets or in valuations.</p> <p>9 I would say that this was relatively -- this was</p> <p>10 a relatively early cut. As I recall, we only received the</p> <p>11 file shortly before this, you know, that morning, and so it</p> <p>12 was certainly not a complete and finalized piece of work. I</p> <p>13 don't recall anyone from Barclays requesting that we provide</p> <p>14 Lehman values or JP Morgan values This was just to give</p> <p>15 them some reference to help everyone understand the</p> <p>16 transaction.</p> <p>17 <b>Q. We earlier talked about the effort on</b></p> <p>18 <b>Friday September 19 to identify additional assets</b></p> <p>19 <b>and receivables. Do you recall that?</b></p> <p>20 A. I do</p> <p>21 <b>Q. Do you recall that effort being the</b></p> <p>22 <b>result of concerns about the valuation of the repo</b></p> <p>23 <b>collateral?</b></p> <p>24 A. I don't recall it being explicitly that,</p> <p>25 although I do -- when I spoke about it with Ian it</p>	<p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 113</p> <p>2 was clear that one of the considerations was the</p> <p>3 valuations, was going to be the valuations, and</p> <p>4 the mix of collateral, and it was not clear to</p> <p>5 them and to some of the senior managers exactly</p> <p>6 what collateral had been transferred over because,</p> <p>7 as I say, it was a very complicated process, and</p> <p>8 so to have their trading teams review and revalue</p> <p>9 all of that was clearly a necessary part of it.</p> <p>10 <b>Q. And then do you recall the effort being</b></p> <p>11 <b>the result of concerns about preserving the</b></p> <p>12 <b>economic value of the transaction for Barclays?</b></p> <p>13 A. Yes, I mean, it was all linked together</p> <p>14 It is perhaps worth saying, and you can see here</p> <p>15 that there are thousands and thousands of</p> <p>16 securities and they are complicated securities.</p> <p>17 Some of these are not liquid, insofar as there are</p> <p>18 observable market prices, and the complexity with</p> <p>19 reviewing this is tremendous, particularly with</p> <p>20 mortgage securities and structured securities. I</p> <p>21 can certainly think of at least one large position</p> <p>22 that was transferred over, for which there would</p> <p>23 be a tremendous range of valuation, you know,</p> <p>24 potentially ascribed, and I am sure that that</p> <p>25 could be applied to many securities</p>

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<p>1           HIGHLY CONFIDENTIAL - PAOLO TONUCCI           114</p> <p>2           So given that the -- you have to understand that</p> <p>3           this is a transaction where the actual assets being</p> <p>4           transferred over is really only being finalized on that</p> <p>5           morning, and is still being reviewed, and so we were trying</p> <p>6           to provide support and assistance insofar as, you know,</p> <p>7           determining the securities and a potential value for those.</p> <p>8           But this is not something which had already been reviewed</p> <p>9           and values confirmed by Barclays, and the BONY system could</p> <p>10          also have had problems with valuing some of these</p> <p>11          securities.</p> <p>12          <b>Q. The one large position you were talking</b></p> <p>13          <b>about, that is Pine?</b></p> <p>14          A. Yes.</p> <p>15          <b>Q. What was Pine?</b></p> <p>16          A. Pine was a CLO, which is</p> <p>17          a collateralized loan obligation</p> <p>18          <b>Q. I have handed you a document that was</b></p> <p>19          <b>previously marked as Exhibit 47. It is about</b></p> <p>20          <b>3 pages of cover e-mails, 4 pages of cover</b></p> <p>21          <b>e-mails, and a large spreadsheet. If you can</b></p> <p>22          <b>review the e-mails and take a look at the</b></p> <p>23          <b>spreadsheet, let me know when you are done, and I</b></p> <p>24          <b>will ask you some questions about them.</b></p> <p>25          MR HUME: The binding of this exhibit</p>	<p>1           HIGHLY CONFIDENTIAL - PAOLO TONUCCI           115</p> <p>2           was obviously done for case of presentation,</p> <p>3           right? It was not presented like this originally.</p> <p>4           A. Yes.</p> <p>5           <b>Q. Reviewing this chain of e-mails,</b></p> <p>6           <b>starting with the earliest e-mail, which is an</b></p> <p>7           <b>e-mail from you to various people, the subject</b></p> <p>8           <b>line is: "Delivering other assets to Barclays".</b></p> <p>9           <b>Do you see that?</b></p> <p>10          A. Yes.</p> <p>11          <b>Q. And is that a reference to this process</b></p> <p>12          <b>we talked about, the assets over and above the</b></p> <p>13          <b>repo assets?</b></p> <p>14          A. That is correct.</p> <p>15          <b>Q. Take a look at the first page of this</b></p> <p>16          <b>exhibit, the e-mail, page 1, Exhibit 47. At the</b></p> <p>17          <b>top of the page there is an e-mail from David</b></p> <p>18          <b>Murgio at Weil to two additional people, V Lewkow</b></p> <p>19          <b>and R Davis. Do you see that?</b></p> <p>20          A. I do.</p> <p>21          <b>Q. Was it your understanding that</b></p> <p>22          <b>spreadsheet information about the collateral was</b></p> <p>23          <b>provided by lawyers for the estate to the lawyers</b></p> <p>24          <b>for Barclays?</b></p> <p>25          A. Yes.</p>
Page 116	Page 117
<p>1           HIGHLY CONFIDENTIAL - PAOLO TONUCCI           116</p> <p>2           <b>Q. There is a reference to BarCap</b></p> <p>3           <b>collateral.xls. Do you see that file?</b></p> <p>4           A. I do.</p> <p>5           <b>Q. That was the same file that you had sent</b></p> <p>6           <b>over earlier, right, Exhibit 143A?</b></p> <p>7           A. Yes.</p> <p>8           <b>Q. If you turn to the fifth page, Bates</b></p> <p>9           <b>number 5138 are the last four digits, do you see</b></p> <p>10          <b>that calculation up there?</b></p> <p>11          A. I do, yes.</p> <p>12          <b>Q. And it is a total of 49.9 billion. Do</b></p> <p>13          <b>you see that?</b></p> <p>14          A. I do.</p> <p>15          <b>Q. And that is in the market value column?</b></p> <p>16          A. I see that.</p> <p>17          <b>Q. And there is four components to that</b></p> <p>18          <b>total. Do you see that?</b></p> <p>19          A. I do</p> <p>20          <b>Q. The first is Fed collateral?</b></p> <p>21          A. Yes</p> <p>22          <b>Q. Do you have an understanding of what</b></p> <p>23          <b>that item is?</b></p> <p>24          A. Yes.</p> <p>25          <b>Q. What is it?</b></p>	<p>1           HIGHLY CONFIDENTIAL - PAOLO TONUCCI           117</p> <p>2           A. It is Fed wirable collateral that was</p> <p>3           transferred over, Fed wire being the market</p> <p>4           settlement system for this type of collateral.</p> <p>5           <b>Q. The next line item is DTC074. Do you</b></p> <p>6           <b>see that?</b></p> <p>7           A. I do.</p> <p>8           <b>Q. Is that an account or a box at DTC?</b></p> <p>9           A. That is I think an account at DTC.</p> <p>10          <b>Q. A Lehman account?</b></p> <p>11          A. Yes.</p> <p>12          <b>Q. The next item is DTC636. Do you see</b></p> <p>13          <b>that?</b></p> <p>14          A. I do.</p> <p>15          <b>Q. What is your understanding of what that</b></p> <p>16          <b>is?</b></p> <p>17          A. That is a different type of DTC account</p> <p>18          <b>Q. And in the last line item is "TP</b></p> <p>19          <b>cached". What does that stand for?</b></p> <p>20          A. That is the tri-party cash.</p> <p>21          <b>Q. Was it your understanding on</b></p> <p>22          <b>Friday September 19 that there was 7 billion</b></p> <p>23          <b>dollars in cash to be delivered to Barclays?</b></p> <p>24          A. I understood that \$7 billion of cash had</p> <p>25          been given by -- had been deposited by Barclays</p>

Page 118		Page 119	
1	HIGHLY CONFIDENTIAL - PAOLO TONUCCI 118	1	HIGHLY CONFIDENTIAL - PAOLO TONUCCI 119
2	with JP Morgan and that it was being held by	2	Q. If you go down to page 5139, do you see
3	JP Morgan.	3	that?
4	Q. Was it your understanding of -- I guess	4	A. I do.
5	these e-mails are all dated September 20, so was	5	Q. There is a column titled "Market value"?
6	it your understanding on September 20, 2008, that	6	A. Yes.
7	the total value of the collateral on the cash in	7	Q. Do you know what the source of that
8	the transaction was 49.9 billion?	8	market value information was in this spreadsheet?
9	MR. HUME: Objection, vague and	9	A. I believe that this was the Lehman price
10	ambiguous as to the value.	10	market value.
11	A. This was my view of the repo transaction	11	(Exhibit 144A marked for identification)
12	on the Thursday night, and it was limited to that,	12	Q. I have handed you a one page document
13	just to the repo transaction.	13	entitled Exhibit 144A. Take a moment to look at
14	Q. So the 15c3 cash, for example, would be	14	that and let me know when you are done.
15	in addition to this?	15	A. Yes.
16	A. That is correct, yes, as well as the	16	Q. Have you seen this document before
17	other unencumbered collateral, as well as other	17	today?
18	components to the agreement.	18	A. I have not, no.
19	Q. The other unencumbered collateral, that	19	Q. Do you remember the information that is
20	would be the Schedule B collateral?	20	contained in this document?
21	A. That is what became Schedule B	21	A. I do
22	collateral, that is right	22	Q. If you can just go through the
23	Q. So that would be added to these items	23	components, the components I want to talk to you
24	here?	24	about are the component that add up to the total
25	A. That is right.	25	securities cash received item. Do you see that?
Page 120		Page 121	
1	HIGHLY CONFIDENTIAL - PAOLO TONUCCI 120	1	HIGHLY CONFIDENTIAL - PAOLO TONUCCI 121
2	A. Okay, yes.	2	A. I do.
3	Q. If you start with the Fed wire	3	Q. And that is 390 million. This is an
4	securities, that is similar to the Fed collateral	4	e-mail dated as of September 19, 2008. Do you
5	entry we were discussing earlier, correct?	5	have an understanding as to what that means?
6	A. Correct.	6	A. I don't know the specifics.
7	Q. And the next item is "DTC cash". Do you	7	Q. And that rolled up into 52.19 billion
8	see that?	8	total. Do you see that?
9	A. I do.	9	A. Yes.
10	Q. Do you have an understanding as to what	10	Q. Again, this does not include, as far as
11	that is?	11	you know, the 15c3 cash, correct?
12	A. DTC securities	12	A. That is correct.
13	Q. The next item down "DTC cash .3".	13	Q. Do you know whether this includes
14	I assume these are billions?	14	Schedule B?
15	A. Yes.	15	A. I would presume that the "Today DTC
16	Q. Do you have an understanding of what	16	collateral" includes some of what became the
17	that line item is?	17	Schedule B collateral.
18	A. I assume it is more DTC securities.	18	Q. When you look below the total securities
19	Q. The reference to "Repo cash, 7 billion".	19	cash received there is a repo cash amount. Do you
20	Do you see that?	20	see that?
21	A. Yes.	21	A. Yes.
22	Q. We have discussed that before?	22	Q. And that is 45 billion?
23	A. That is correct.	23	A. Yes.
24	Q. And then it says "Today DTC collateral".	24	Q. So the differential between the value of
25	Do you see that?	25	the securities and cash received and the repo cash



Page 122		Page 123	
1	<b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI 122</b>	1	<b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI 123</b>
2	amount is listed as excess collateral there,	2	A. I know Stephen, yes.
3	right?	3	<b>Q. Is he in your group?</b>
4	A. That is right.	4	A. No.
5	<b>Q. That is \$7 billion?</b>	5	<b>Q. Back in the last quarter of 2008, did</b>
6	A. Yes.	6	<b>you work with Gerry or Stephen?</b>
7	<b>Q. So that is the excess of market value</b>	7	A. Yes, intermittently. I mean we were not
8	<b>over cash paid for the repo?</b>	8	in the same group but we worked together on a few
9	A. That is, you know, what it looks like.	9	things, you know
10	<b>Q. And this, as far as you can tell, the</b>	10	(Exhibit 145A marked for identification)
11	<b>folks who have sent this e-mail around are all</b>	11	<b>Q. I have had placed before you a 3-page</b>
12	<b>Barclays folks, right?</b>	12	<b>document marked Exhibit 145A.</b>
13	A. Yes	13	A. Yes.
14	<b>Q. Not former Lehman people, is that right?</b>	14	<b>Q. If you take a moment to look at that</b>
15	A. No	15	<b>e-mail chain and let me know when you are done.</b>
16	<b>Q. And are they also still at Barclays?</b>	16	A. Yes.
17	A. I have no idea.	17	<b>Q. You will see the subject line of the</b>
18	<b>Q. Do you know any of these names, Gerry</b>	18	<b>series of e-mails is "Opening balance sheet". Do</b>
19	<b>LaRocca?</b>	19	<b>you see that?</b>
20	A. I do.	20	A. I do.
21	<b>Q. Does Gerry work with you?</b>	21	<b>Q. This is part of the effort that you had</b>
22	A. No	22	<b>testified about before, which was preparing the</b>
23	<b>Q. Not in your department or group?</b>	23	<b>initial opening balance sheet?</b>
24	A. No.	24	A. That is correct.
25	<b>Q. Stephen King?</b>	25	<b>Q. It starts off with an e-mail from Martin</b>
Page 124		Page 125	
1	<b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI 124</b>	1	<b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI 125</b>
2	Kelly to Robert Azerad, Blackwell and Beldner,	2	assets and paid net 38 billion of cash." Do you
3	right. Who was Brett Beldner?	3	see that?
4	A. He is an accountant who worked for	4	A. Yes.
5	Martin Kelly.	5	<b>Q. That is one item in your e-mail,</b>
6	<b>Q. He was at Lehman, right?</b>	6	<b>correct?</b>
7	A. He was.	7	A. Correct.
8	<b>Q. Is he now at Barclays?</b>	8	<b>Q. And that is your recap of the repo</b>
9	A. I don't know.	9	<b>situation?</b>
10	<b>Q. You are copied on that e-mail at the</b>	10	A. That is correct.
11	<b>bottom of page 2, right?</b>	11	<b>Q. You have a second item: "Their opening</b>
12	A. Yes.	12	<b>balance sheet should also include 1.9 billion of</b>
13	<b>Q. If you go over to page 1 of this</b>	13	<b>box assets". Correct?</b>
14	<b>Exhibit 145A, it is the e-mail at the bottom of</b>	14	A. Correct.
15	<b>the page which is an e-mail from you to a group of</b>	15	<b>Q. What is that a reference to?</b>
16	<b>people. Do you see that?</b>	16	A. The unencumbered collateral.
17	A. Yes.	17	<b>Q. Schedule B?</b>
18	<b>Q. And you have got sort of two items in</b>	18	A. Which became Schedule B.
19	<b>your e-mail, correct?</b>	19	<b>Q. I guess there is a third item then, "and</b>
20	MR. HUME: Which e-mail?	20	<b>one billion of cash receivable from the release of</b>
21	<b>Q. The bottom of page 1. Are you with me,</b>	21	<b>lock ups." Correct?</b>
22	<b>Mr. Tonucci?</b>	22	A. That is correct.
23	A. What are the two items?	23	<b>Q. And that is the 15c3?</b>
24	<b>Q. The first item is "I think they have</b>	24	A. That is correct.
25	<b>..." and you correct yourself, "42.9 billion of</b>	25	<b>Q. And at least on the morning</b>

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1       **HIGHLY CONFIDENTIAL - PAOLO TONUCCI**       126

2       of September 20 those were the sort of three

3       components you were thinking of as comprising the

4       balance sheet. Correct?

5       MR. HUME: Objection, lacks foundation.

6       A. Those were the components that I was

7       aware of, so I was not the accountant and I was

8       not on the negotiation team and I was not aware of

9       any other entries that may be being made for

10      example on the liability side or for other assets

11      over and above these.

12      **Q. Just on a net basis, the three**

13      **components that you identified at the bottom of**

14      **page 1, there is a net of 4 billion on the repo**

15      **piece, correct?**

16      A. If you are calculating the 42.9 minus

17      the 38.

18      **Q. Yes.**

19      A. That is the calculation you are doing?

20      **Q. That is the calculation. It is actually**

21      **4.9.**

22      A. That is correct.

23      **Q. You add to that the 1.9 of boxed assets?**

24      A. Yes.

25      **Q. With no offsetting liability against**

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1       **HIGHLY CONFIDENTIAL - PAOLO TONUCCI**       128

2       were liabilities for compensation and for other

3       payments, services and so on that, you know, were

4       not part of the numbers that I was putting

5       together.

6       (Exhibit 146A marked for identification)

7       **Q. I have handed you a 3-page document**

8       **marked Exhibit 146A, an e-mail chain. Let me know**

9       **when you are done reviewing it.**

10      A. Yes.

11      **Q. Do you recognize this as a series of**

12      **e-mails between folks at Lehman about a transfer**

13      **of collateral to BarCap?**

14      A. Yes.

15      **Q. And this is a series of e-mails**

16      **dated September 22, 2008. Correct?**

17      A. Yes.

18      **Q. And it is early in the morning, right,**

19      **6:00 or 7:00 am?**

20      A. Yes.

21      **Q. And is that before the clarification**

22      **letter is signed?**

23      MR. HUME: Objection, lacks foundation

24      The witness has testified he didn't review it that

25      week.

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1       **HIGHLY CONFIDENTIAL - PAOLO TONUCCI**       127

2       that 1.9?

3       MR. HUME: Objection, lacks foundation.

4       A. That is not clear to me. I can only

5       tell you the asset side that I was aware of.

6       **Q. So the asset side you have net assets on**

7       **the repo of 4.9, 1.9 on the box assets and then**

8       **a billion on the cash receivable?**

9       MR. HUME: Objection, vagueness, vague

10      and ambiguous.

11      MR. TAMBE: Right?

12      A. You can read it.

13      **Q. And that is a total of what, about**

14      **7.9 billion?**

15      MR. HUME: Objection, lacks foundation.

16      You are just asking him to do the maths?

17      A. You are just asking me to add up?

18      **Q. 7.8 billion --**

19      A. Yes.

20      **Q. Were you aware of any liabilities that**

21      **offset that 7.8 billion dollars of net assets**

22      **delivered to Barclays?**

23      A. I knew there were some liabilities.

24      **Q. What magnitude?**

25      A. I was not sure but I knew that there

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1       **HIGHLY CONFIDENTIAL - PAOLO TONUCCI**       129

2       A. I can't say

3       **Q. Do you recall there being some urgency**

4       **on the morning of September 22 to getting answers**

5       **to this question, "queuing up delivery to BarCap"?**

6       MR. HUME: Objection, vague.

7       A. I don't really know but, you know,

8       I would say that everyone was focused on doing

9       their job.

10      **Q. And what was your job that morning?**

11      A. Well, we were trying to close the

12      transaction in an orderly way.

13      **Q. There is an e-mail at the bottom of page**

14      **1 over to page 2 from Monty Forrest to you and**

15      **Robert Azerad. Do you see that e-mail?**

16      A. Yes.

17      **Q. And his first numbered point, which is**

18      **at the bottom of page 1 over on to page 2 states:**

19      **"What was the final agreed upon list (our**

20      **version or the version after Robert took out and**

21      **re-marked Lehman paper.)"**

22      **Do you see that?**

23      A. Yes.

24      **Q. Do you understand the reference to**

25      **re-marked Lehman paper?**

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<p>1       <b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>       130</p> <p>2       A. Well, just I think it is more relevant</p> <p>3       that he just removed the Lehman paper. There was</p> <p>4       some -- in the original unencumbered list there</p> <p>5       was some securities which were Lehman issued.</p> <p>6       <b>Q. It is not your understanding that there</b></p> <p>7       <b>was a mark down of Lehman paper by Robert in that</b></p> <p>8       <b>list?</b></p> <p>9       A. That is not what it refers to</p> <p>10       (Exhibit 147A marked for identification)</p> <p>11       <b>Q. I have handed you a 2-page document</b></p> <p>12       <b>marked Exhibit 147A, an e-mail chain. Please</b></p> <p>13       <b>review it and let me know when you are done.</b></p> <p>14       A. Yes.</p> <p>15       <b>Q. And you recognize this as a series of</b></p> <p>16       <b>e-mails, again dated September 22, 2008?</b></p> <p>17       A. Yes.</p> <p>18       <b>Q. And these are additional e-mails about</b></p> <p>19       <b>the financing facility?</b></p> <p>20       A. Additional e-mails about the securities</p> <p>21       that were transferred over and confirmation of</p> <p>22       those securities.</p> <p>23       <b>Q. On page 2 of this exhibit, the body of</b></p> <p>24       <b>the e-mail from Jasen Yang to Robert Azerad and</b></p> <p>25       <b>James Hraska. Do you see that?</b></p>	<p>1       <b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>       131</p> <p>2       A. Yes.</p> <p>3       <b>Q. And you are seen as a copy on that</b></p> <p>4       <b>e-mail?</b></p> <p>5       A. Yes.</p> <p>6       <b>Q. It appears from that e-mail that he is</b></p> <p>7       <b>sending over to you the BONY valuation of the</b></p> <p>8       <b>collateral, is that right?</b></p> <p>9       A. Sending over the BONY file, which</p> <p>10       includes the valuation, but it obviously also</p> <p>11       includes the details around nominal and</p> <p>12       securities.</p> <p>13       <b>Q. There is a reference to BONY market</b></p> <p>14       <b>value of approximately 45MM. Do you see that?</b></p> <p>15       A. Yes.</p> <p>16       <b>Q. He was referring to a 45 billion-dollar</b></p> <p>17       <b>value, correct?</b></p> <p>18       A. I assume so.</p> <p>19       <b>Q. You will see on page 1 of the e-mail</b></p> <p>20       <b>a reference to "fast reconciliation". Do you see</b></p> <p>21       <b>that?</b></p> <p>22       A. I do.</p> <p>23       <b>Q. Was that sort of the beginning of the</b></p> <p>24       <b>reconciliation process you talked about before?</b></p> <p>25       A. We had tried to do an initial</p>
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<p>1       <b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>       132</p> <p>2       reconciliation on the Friday. This was</p> <p>3       a subsequent reconciliation and at a more detailed</p> <p>4       level Jasen had identified what he saw as some</p> <p>5       discrepancies, and we were trying to resolve</p> <p>6       whether those discrepancies existed, principally</p> <p>7       in the securities that were transferred over and</p> <p>8       the nominal value of those securities.</p> <p>9       (Break from 10.37 to 10:55 am.)</p> <p>10       MR. TAMBE: Mr. Tonucci, I have placed</p> <p>11       before you a document marked Exhibit 126. Can you</p> <p>12       take a moment to look at the e-mail chain and let</p> <p>13       me know when you are done.</p> <p>14       A. Yes</p> <p>15       <b>Q. Starting with the e-mail at the bottom</b></p> <p>16       <b>of the page, it is from Gerry Reilly to Ian Lowitt</b></p> <p>17       <b>and Michael Gelband. You are copied on it. Do</b></p> <p>18       <b>you see that?</b></p> <p>19       A. I do.</p> <p>20       <b>Q. There are three numbered items in that</b></p> <p>21       <b>e-mail. Do you see that?</b></p> <p>22       A. Yes.</p> <p>23       <b>Q. The third item reads: "Not clear on the</b></p> <p>24       <b>amount of blocked discount or how we make it</b></p> <p>25       <b>happen." Do you see that?</b></p>	<p>1       <b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>       133</p> <p>2       A. Yes.</p> <p>3       <b>Q. And you understand that to be</b></p> <p>4       <b>a reference to the 5 billion-dollar discount that</b></p> <p>5       <b>we talked about earlier?</b></p> <p>6       MR. HUME: Objection, lacks foundation.</p> <p>7       A. I understand it to be a reference to the</p> <p>8       discount on purchase, so I would have linked it to</p> <p>9       that \$5 billion.</p> <p>10       <b>Q. Then the next sentence reads:</b></p> <p>11       <b>"Defaulting on repo could be the best as</b></p> <p>12       <b>discounts could be taken from the haircut."</b></p> <p>13       <b>Do you see that?</b></p> <p>14       A. Yes.</p> <p>15       <b>Q. Do you remember discussing with anyone</b></p> <p>16       <b>at Lehman defaulting on the repo as a way of</b></p> <p>17       <b>providing the discount to Barclays?</b></p> <p>18       A. Yes.</p> <p>19       <b>Q. With whom did you discuss that?</b></p> <p>20       A. I think it was with Ian and with Gerry,</p> <p>21       perhaps Martin Kelly as well.</p> <p>22       <b>Q. And then in Gerry's e-mail at the bottom</b></p> <p>23       <b>of this e-mail chain on exhibit 126 he says:</b></p> <p>24       <b>"If not that then we need to give business an</b></p> <p>25       <b>allocation of block discount so they can mark down the</b></p>

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<p>1       <b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>       134</p> <p>2   books tonight."</p> <p>3       Do you see that?</p> <p>4       A   Yes.</p> <p>5       Q.   Do you recall if that ever happened,</p> <p>6   whether there was an allocation of a block</p> <p>7   discount?</p> <p>8       A.   I don't know</p> <p>9       Q.   Does the phrase "block discount" have</p> <p>10 any meaning to you?</p> <p>11       A.   Not really.</p> <p>12       Q.   Other than what we have talked about</p> <p>13 here?</p> <p>14       A.   Other than in this context.</p> <p>15       Q.   The next e-mail up, from Ian Lowitt to</p> <p>16 Gerry Reilly and Michael Gelband talks about</p> <p>17 "shrinking down matched book". Do you see that?</p> <p>18       A.   I do.</p> <p>19       Q.   Do you understand that to be a reference</p> <p>20 to what we talked about before, about the matched</p> <p>21 book being shrunk down to zero?</p> <p>22       A.   Yes.</p> <p>23       Q.   The first bullet point in Gerry Reilly's</p> <p>24 e-mail at the bottom of the page talks about the</p> <p>25 option rate book. Do you see that?</p>	<p>1       <b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>       135</p> <p>2       A   Yes.</p> <p>3       Q.   Was it your understanding during this</p> <p>4 week of 15 September that there were assets that</p> <p>5 Barclays was picking and choosing as to which</p> <p>6 assets it was prepared to purchase?</p> <p>7       A.   That is right.</p> <p>8       MR. HUME: Objection.</p> <p>9       A.   That was my understanding</p> <p>10       Q.   And from whom did you get that</p> <p>11 understanding?</p> <p>12       A.   I can't recall but I understood that</p> <p>13 they were not going to be buying all the assets.</p> <p>14       Q.   Was it your understanding that there was</p> <p>15 a change or an evolution in the transaction where</p> <p>16 it went from being all assets to only some assets?</p> <p>17       A.   No, I understood that it was never all</p> <p>18 assets.</p> <p>19       Q.   Did you have an understanding as to who</p> <p>20 was making the decisions as to which assets it</p> <p>21 would be?</p> <p>22       A.   It was -- I think it was the negotiation</p> <p>23 team, Barclays and Lehman negotiation team.</p> <p>24       Q.   Was it your understanding that it was</p> <p>25 Barclays making the decisions?</p>
Page 136	Page 137
<p>1       <b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>       136</p> <p>2       A.   Well, they were the buyers so they would</p> <p>3 by extension have the final decision on what</p> <p>4 assets are bought</p> <p>5       Q.   I have placed before you a document</p> <p>6 marked Exhibit 127. It is another branch in the</p> <p>7 e-mail chain that we were looking at before in</p> <p>8 126. Let me know when you are done with the</p> <p>9 document.</p> <p>10       A.   Yes.</p> <p>11       Q.   So it starts with the same Gerry Reilly</p> <p>12 e-mail at the bottom but there is a different</p> <p>13 e-mail at the top. At the top of the document</p> <p>14 there is an e-mail from Eric Felder to various</p> <p>15 e-mail at Lehman. Do you see that?</p> <p>16       A.   Yes.</p> <p>17       Q.   And Eric says:</p> <p>18       "The Barclays guys chose the assets. We did not</p> <p>19 have anything to do with it."</p> <p>20       Do you see that?</p> <p>21       A.   Yes.</p> <p>22       Q.   And that was consistent with your</p> <p>23 understanding of how the assets were picked --</p> <p>24       MR. HUME: Objection to the lack of</p> <p>25 foundation Mr. Tonnuci is not on that e-mail</p>	<p>1       <b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>       137</p> <p>2       A.   I mean, I have only seen this e-mail in</p> <p>3 the deposition process and I have not spoken to</p> <p>4 Eric and I was not part of the negotiation team.</p> <p>5 I am not sure what Eric was seeing. Eric was also</p> <p>6 not -- you know, he was running the credit book so</p> <p>7 I don't know if he would have seen all parts of</p> <p>8 this process.</p> <p>9       Q.   Basically, one way or the other, you</p> <p>10 don't know whether what Eric says here is right?</p> <p>11       A.   That is right.</p> <p>12       (Exhibit 148A marked for identification)</p> <p>13       Q.   I have handed you a 2-page document</p> <p>14 marked Exhibit 148A. Let me know when you are</p> <p>15 done with it.</p> <p>16       A.   Okay.</p> <p>17       Q.   In the top e-mail on this chain of</p> <p>18 e-mails from Gerry Reilly to Martin Kelly and</p> <p>19 Daniel Flores, I want you to focus on that e-mail.</p> <p>20 Do you have it there?</p> <p>21       A.   I do.</p> <p>22       Q.   You are not shown as a copy on any of</p> <p>23 these e-mails. Can I ask you about a phrase that</p> <p>24 is used in this e-mail. The third sentence of</p> <p>25 that e-mail, Gerry Reilly's e-mail states that:</p>

<p style="text-align: right;">Page 138</p> <p>1       <b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>       138</p> <p>2       "Purchase will be at a fixed discount on the</p> <p>3       assets that remain to reflect the bulk size of the</p> <p>4       purchase".</p> <p>5       Do you see that?</p> <p>6       A. I do.</p> <p>7       Q. Did anyone ever describe for you the</p> <p>8       reason for the discount being the bulk size of the</p> <p>9       purchase?</p> <p>10      A. I don't recall that, no.</p> <p>11      Q. Does that phrase have any meaning to</p> <p>12      you?</p> <p>13      A. I have not seen it before.</p> <p>14      Q. Then the next sentence in Gerry Reilly's</p> <p>15      e-mail starts off by saying: "We can track our</p> <p>16      PL..." Is that profit and loss?</p> <p>17      A. Yes.</p> <p>18      Q. "... by assets category, which gives</p> <p>19      some indication of how much we have moved the</p> <p>20      marks". Do you see that?</p> <p>21      A. Yes.</p> <p>22      Q. Do you understand the reference to</p> <p>23      "moving the marks"?</p> <p>24      A. Yes. Can I give you just a bit of</p> <p>25      context, because I think that you are sort of</p>	<p style="text-align: right;">Page 139</p> <p>1       HIGHLY CONFIDENTIAL - PAOLO TONUCCI       139</p> <p>2       misunderstanding some of this Post Lehman, even</p> <p>3       pre the Lehman filing on the weekend of</p> <p>4       12/13/14th, there was a tremendous amount of price</p> <p>5       volatility and tremendous amount of uncertainty in</p> <p>6       sort of the traded price of a lot of securities,</p> <p>7       even those which were exchange traded, and</p> <p>8       therefore there was more visibility on -- we were</p> <p>9       experiencing a huge amount of volatility. The</p> <p>10      process of re-marking, that was something that</p> <p>11      would typically be conducted on a daily basis and</p> <p>12      was conducted by thousands of traders, so it was</p> <p>13      not as though there was one person with a giant</p> <p>14      brain sat at the centre of this re-marking process</p> <p>15      who had understanding or an ability to re-mark all</p> <p>16      of these assets. It really was a very distributed</p> <p>17      process which involved many, many people, because</p> <p>18      they were responsible for their trading books and</p> <p>19      for the risks on those trading books, and had the</p> <p>20      best understanding of the securities</p> <p>21      So on any given day there was going to</p> <p>22      be a lot of price volatility and the movement in</p> <p>23      the marks was often just a function of market</p> <p>24      price volatility. It may also be a function of</p> <p>25      actual trading activity, but I would say that in</p>
<p style="text-align: right;">Page 140</p> <p>1       HIGHLY CONFIDENTIAL - PAOLO TONUCCI       140</p> <p>2       this week the amount of trading activity for these</p> <p>3       particular securities and for these traders was</p> <p>4       limited, so really it is a matter of sort of</p> <p>5       interpretation of where the market is.</p> <p>6       You have to add to that the fact that</p> <p>7       the holding company had filed and so the coverage</p> <p>8       of the desks was also impaired. I don't think</p> <p>9       that there would be every trader turning up and</p> <p>10      re-marking his book. So there was great</p> <p>11      difficulty in just creating the P&amp;L and in being</p> <p>12      able to track the movements. So that sort of</p> <p>13      added to the complexity here</p> <p>14      So my interpretation here is that the</p> <p>15      amount that we have moved the marks is really just</p> <p>16      a reference to the traders re-marking their books</p> <p>17      because of this, because of what is being observed</p> <p>18      in the market, and it probably was the most</p> <p>19      volatile week in the market in the last nearly</p> <p>20      100 years So very, very difficult, very</p> <p>21      difficult process, and we were not getting good</p> <p>22      P&amp;L's on a daily basis as a result. It was much</p> <p>23      more complicated than was typically the case, and</p> <p>24      on a typical day the process was complicated, so</p> <p>25      this was really extraordinarily difficult to</p>	<p style="text-align: right;">Page 141</p> <p>1       HIGHLY CONFIDENTIAL - PAOLO TONUCCI       141</p> <p>2       track, to track assets, the asset position and to</p> <p>3       track valuations.</p> <p>4       Q. In the week of September 15 you did not</p> <p>5       do any of the marking of the prices, right?</p> <p>6       A. Absolutely not.</p> <p>7       Q. That is not something you do?</p> <p>8       A. No.</p> <p>9       Q. You don't know specifically what traders</p> <p>10      marked down what prices for what reason, correct?</p> <p>11      A. No.</p> <p>12      Q. You don't know if the marking down was</p> <p>13      pursuant to price movements in the market or</p> <p>14      because they were allocated a block discount?</p> <p>15      A. I don't know with certainty, but you did</p> <p>16      ask me for my interpretation of this and my</p> <p>17      interpretation is that it is going to be</p> <p>18      predominantly because of the volatility in</p> <p>19      valuations in the market</p> <p>20      Q. Okay, and you don't know whether that is</p> <p>21      because they were allocated a block discount to</p> <p>22      mark down their books?</p> <p>23      A. I am saying that it is not because of</p> <p>24      the allocation of a block discount. My</p> <p>25      interpretation of this is that it was because of</p>

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<p>1       <b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>       142</p> <p>2       the market price movements.</p> <p>3       <b>Q. I have handed you a document marked as</b></p> <p>4       <b>Exhibit 71B. It is an e-mail exchange between</b></p> <p>5       <b>yourself and Alastair Blackwell. Do you see that?</b></p> <p>6       A. Yes</p> <p>7       <b>Q. It is on Friday, September 19, 2008. Do</b></p> <p>8       <b>you see that?</b></p> <p>9       A. Yes</p> <p>10      <b>Q. At the top of the e-mail Alastair asks</b></p> <p>11      <b>you: "Putting the repo into default is my</b></p> <p>12      <b>conversion?" Do you see that?</b></p> <p>13      A. Um hum.</p> <p>14      <b>Q. Do you have a recollection of having</b></p> <p>15      <b>a discussion with Alastair about putting the repo</b></p> <p>16      <b>into default on Friday, September 19?</b></p> <p>17      A. I don't, no.</p> <p>18      <b>Q. Any understanding of the phrase "my</b></p> <p>19      <b>conversion", what he meant by that?</b></p> <p>20      A. My interpretation would be that his area</p> <p>21      would have to rebook the repo, convert the repo</p> <p>22      into a sale transaction.</p> <p>23      <b>Q. And your understanding was that</b></p> <p>24      <b>a default on the repo really converted what was a</b></p> <p>25      <b>two-leg transaction; the repurchase leg would go</b></p>	<p>1       <b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>       143</p> <p>2       away and there would effectively be a sale of the</p> <p>3       asset?</p> <p>4       MR. HUME: Objection.</p> <p>5       A. That is correct. It would become</p> <p>6       a sale.</p> <p>7       (Exhibit 149A marked for identification)</p> <p>8       <b>Q. I have handed you a 2-page document</b></p> <p>9       <b>marked Exhibit 149A. Let me know when you are</b></p> <p>10      <b>done reviewing that document.</b></p> <p>11      A. Yes.</p> <p>12      <b>Q. Have you ever seen this document before</b></p> <p>13      <b>today?</b></p> <p>14      A. No.</p> <p>15      <b>Q. You know who Bob Diamond is, right?</b></p> <p>16      A. Yes.</p> <p>17      <b>Q. Who is he?</b></p> <p>18      A. He is the President of Barclays.</p> <p>19      <b>Q. Do you know who Michael Klein is?</b></p> <p>20      A. Yes.</p> <p>21      <b>Q. Who is Michael Klein?</b></p> <p>22      A. He is someone who was involved in the</p> <p>23      transaction.</p> <p>24      <b>Q. Is he someone that you dealt with during</b></p> <p>25      <b>that week of September 15?</b></p>
Page 144	Page 145
<p>1       <b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>       144</p> <p>2       A. Yes, I spoke to him. I dealt with him</p> <p>3       you know, just through that week. I don't think I</p> <p>4       have seen him since then.</p> <p>5       <b>Q. Describe your interactions with</b></p> <p>6       <b>Mr. Klein during that week. What were you</b></p> <p>7       <b>speaking with him about?</b></p> <p>8       A. Predominantly it was clarification of</p> <p>9       the assets, so Michael was asking for various</p> <p>10      points, just details of the sort of asset</p> <p>11      schedules and some of the other transfers. That</p> <p>12      is all I can really recall.</p> <p>13      <b>Q. Was he part of the conversations on</b></p> <p>14      <b>Friday, September 19, about locating additional</b></p> <p>15      <b>assets and value for Barclays?</b></p> <p>16      A. I didn't speak to him on that, sorry, I</p> <p>17      don't know.</p> <p>18      <b>Q. In his e-mail to Bob Diamond on</b></p> <p>19      <b>Saturday, September 20, 2008, Mike says: "Great</b></p> <p>20      <b>day. We clawed back 3 billion more of value of</b></p> <p>21      <b>the transaction". Do you see that?</b></p> <p>22      A. I do see that.</p> <p>23      <b>Q. Any understanding as to what he is</b></p> <p>24      <b>referring to in the 3 billion more of value?</b></p> <p>25      MR. HUME: Objection, calls for</p>	<p>1       <b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>       145</p> <p>2       speculation.</p> <p>3       A. I don't know what would go into that</p> <p>4       specifically.</p> <p>5       <b>Q. Was it your understanding on Friday or</b></p> <p>6       <b>Saturday of that week that Lehman had provided an</b></p> <p>7       <b>additional \$3 billion of value to Barclays?</b></p> <p>8       MR. HUME: Objection, lacks foundation.</p> <p>9       Witness has testified he was not negotiating the</p> <p>10      economics of the deal.</p> <p>11      A. I can't really answer that, I don't</p> <p>12      know.</p> <p>13      <b>Q. But we have talked about a couple of</b></p> <p>14      <b>items of additional value on Friday, September 19,</b></p> <p>15      <b>right?</b></p> <p>16      A. We have, but we have also talked about</p> <p>17      the price volatility and the lack of certainty</p> <p>18      around the actual assets that were being</p> <p>19      transferred, and just the difficulty in</p> <p>20      establishing values. So I mean I wouldn't sort</p> <p>21      of, you know, I wouldn't sort of describe this as</p> <p>22      just additive to the original transaction. It was</p> <p>23      clearly changing.</p> <p>24      <b>Q. And among the items that were added was</b></p> <p>25      <b>1.9 billion in Schedule B, is that right?</b></p>

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1       **HIGHLY CONFIDENTIAL - PAOLO TONUCCI**       146

2       MR. HUME: Objection, mischaracterizes

3       his testimony.

4       **Q. Right?**

5       MR. HUME. Objection.

6       A. Can I clarify your question, please?

7       **Q. You can answer my question.**

8       A. I am asking you what are you referring

9       to when you are saying "in addition there was". I

10      am not sure what you mean In addition to what?

11      **Q. I have talked about the components at**

12      **least that you have in your e-mail, where you**

13      **recap the opening balance sheet, right, you have**

14      **the repo component and then you have 1.9 billion**

15      **for what we have talked about, became Schedule B,**

16      **and then you had another billion dollars of the**

17      **15c3 receivables?**

18      A. That is correct.

19      **Q. And the 1.9 and the 1 is about**

20      **\$2.9 billion, right?**

21      A. That is correct.

22      **Q. And that was additional value over and**

23      **above the repo, correct?**

24      MR. HUME: Objection.

25      A. Additional assets over and above the

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1       **HIGHLY CONFIDENTIAL - PAOLO TONUCCI**       148

2       collateral by JP Morgan?

3       A. That is correct.

4       **Q. And that presented Lehman with some**

5       **difficulties?**

6       A. It was a very large cash request, so an

7       unusual size and difficult, a difficult request to

8       fulfill, particularly in the way that they -- the

9       tuning that they wanted it.

10      **Q. In terms of dealing with JP Morgan**

11      **during the week of the 15th through the 22nd, did**

12      **you experience any other difficulties or**

13      **impediments in dealing with them?**

14      A. They were certainly not being very

15      cooperative

16      **Q. Can you describe to me what you mean by**

17      **that?**

18      A. Really they were just not being very

19      cooperative.

20      **Q. Anything specific you recall?**

21      A. No, general. I don't think there is

22      anything specific that I would point to, just

23      generally not very cooperative, not providing

24      a lot of information, you know, not on a timely

25      basis, not releasing transactions on a timely

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1       HIGHLY CONFIDENTIAL - PAOLO TONUCCI       147

2       repo assets that were transferred on the Thursday

3       night.

4       **Q. We have touched on this briefly, about**

5       **the \$7 billion in cash that had been transferred**

6       **from Barclays to JP Morgan, is that right?**

7       A. That is correct.

8       **Q. On Friday, the 19th?**

9       A. That was transferred on the Thursday,

10      the 18th.

11      **Q. On Thursday the 18th, just using that as**

12      **a springboard, can you describe for me generally**

13      **the interactions between Lehman and JP Morgan**

14      **during that week, so that week of the 15th on**

15      **through the 22nd?**

16      A. Yes. JP Morgan was continuing to

17      provide clearance for LBI, and so there were

18      discussions through the week about that activity

19      related to that clearance activity. You know,

20      I spoke to them a number of times about all

21      related to clearance activity, tri-party and

22      securities clearance.

23      **Q. I think you described that one of the**

24      **liquidity issues that arose on the 12th, the**

25      **Friday the 12th, was a demand for additional**

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1       HIGHLY CONFIDENTIAL - PAOLO TONUCCI       149

2       basis, you know, those types of things.

3       **Q. Do you recall any difficulty in dealing**

4       **with JP Morgan over the \$7 billion in cash either**

5       **on 19 September or thereafter?**

6       A. I absolutely never spoke to them about

7       that

8       **Q. Did other people describe to you their**

9       **interactions with JP Morgan about that item?**

10      A. Not really.

11      **Q. Are you aware of any settlement**

12      **agreement between JP Morgan and Barclays over the**

13      **subject matter of this proceeding?**

14      A. I am. It was a matter of I think court

15      record and it was publicly disclosed. I am not

16      aware of any details over and above those that

17      were publicly disclosed.

18      **Q. What are you aware about -- scratch**

19      **that. What is your knowledge about the settlement**

20      **between JP Morgan and Barclays?**

21      A. That there was a component of cash and

22      there were a selection of securities that were

23      transferred. I have not seen the securities that

24      were transferred over but I was aware that that

25      was the sort of composition, and I think

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<p>1       HIGHLY CONFIDENTIAL - PAOLO TONUCCI       150</p> <p>2       subsequently I may have seen some asset level cut</p> <p>3       of that, because of the entities in which it was</p> <p>4       going to get booked in in Barclays, but it is very</p> <p>5       sort of general information</p> <p>6       <b>Q. In the time period after you joined</b></p> <p>7       <b>Barclays, were you involved at all in doing any</b></p> <p>8       <b>analytics or assisting with that settlement?</b></p> <p>9       A. No.</p> <p>10      <b>Q. Were you asked to do any valuations of</b></p> <p>11      <b>what had been transferred to Barclays in</b></p> <p>12      <b>connection with that settlement?</b></p> <p>13      A. No</p> <p>14      <b>Q. Have you seen any documentation about</b></p> <p>15      <b>the settlement?</b></p> <p>16      A. No.</p> <p>17      <b>Q. Do you know who would have done the</b></p> <p>18      <b>analytics in connection with that settlement?</b></p> <p>19      A. I would imagine that it would have been</p> <p>20      the accounting team, the finance team, so it could</p> <p>21      be Martin Kelly, someone in Martin Kelly's team.</p> <p>22      MR. HUME: Don't speculate.</p> <p>23      A. But I don't know. I mean that is</p> <p>24      speculative.</p> <p>25      (Exhibit 150A marked for identification)</p>	<p>1       HIGHLY CONFIDENTIAL - PAOLO TONUCCI       151</p> <p>2       <b>Q. I have handed you a document marked</b></p> <p>3       <b>Exhibit 150A. Take a moment to read that and let</b></p> <p>4       <b>me know when you are done.</b></p> <p>5       A. I have read it.</p> <p>6       <b>Q. I think the bottom e-mail is one we have</b></p> <p>7       <b>seen on another exhibit. It is the e-mail from</b></p> <p>8       <b>Martin Kelly to certain people?</b></p> <p>9       A. Yes.</p> <p>10      <b>Q. Requesting the opening balance sheet.</b></p> <p>11      <b>Your response in the fourth paragraph, an e-mail</b></p> <p>12      <b>which begins: "I think the reversions within the</b></p> <p>13      <b>asset transferred." Do you see that?</b></p> <p>14      A. Yes.</p> <p>15      <b>Q. Further down in that paragraph you refer</b></p> <p>16      <b>to treating something as a "broken repo". What</b></p> <p>17      <b>did you mean by a "broken repo"?</b></p> <p>18      A. A defaulted repo</p> <p>19      <b>Q. And there is a reference to cleaning up</b></p> <p>20      <b>with the clients at the other side, and that is</b></p> <p>21      <b>what, reconciling -- what did you mean by that?</b></p> <p>22      A. Clean up with a broken repo or defaulted</p> <p>23      repo is the rebooking of that transaction as</p> <p>24      a purchase or as a sale.</p> <p>25      (Exhibit 151A marked for identification)</p>
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<p>1       HIGHLY CONFIDENTIAL - PAOLO TONUCCI       152</p> <p>2       <b>Q. I have handed you a 3-page document</b></p> <p>3       <b>marked Exhibit 151A. Let me know when you are</b></p> <p>4       <b>done reading it.</b></p> <p>5       A. Yes.</p> <p>6       <b>Q. Once again this is an e-mail chain that</b></p> <p>7       <b>begins with the request for the opening balance</b></p> <p>8       <b>sheet at the bottom of page 1 over to page 2. Do</b></p> <p>9       <b>you see that?</b></p> <p>10      A. I do.</p> <p>11      <b>Q. At the top of page 1 is an e-mail from</b></p> <p>12      <b>Robert Azerad to you and others. Do you see that?</b></p> <p>13      A. I do.</p> <p>14      <b>Q. And it refers to the details of the</b></p> <p>15      <b>15c3, both customer and PAIB. Do you see that?</b></p> <p>16      A. I do see that, yes.</p> <p>17      <b>Q. What is your understanding of what PAIB</b></p> <p>18      <b>stands for?</b></p> <p>19      A. I thought it was to do with other</p> <p>20      brokers.</p> <p>21      MR. HUME: Again, don't speculate if you</p> <p>22      are not sure.</p> <p>23      A. It is not really my area of knowledge.</p> <p>24      <b>Q. Would that be Mr. Azerad's area of</b></p> <p>25      <b>knowledge?</b></p>	<p>1       HIGHLY CONFIDENTIAL - PAOLO TONUCCI       153</p> <p>2       A. Not really. It would be more people,</p> <p>3       someone from the regulatory accounting or</p> <p>4       compliance group.</p> <p>5       <b>Q. Do you have an understanding of the</b></p> <p>6       <b>spreadsheet that is attached as page 3 of this</b></p> <p>7       <b>exhibit?</b></p> <p>8       A. I do.</p> <p>9       <b>Q. What is your understanding of what that</b></p> <p>10      <b>spreadsheet is --</b></p> <p>11      A. It is a calculation of the 15c3 and the</p> <p>12      requirement on different days</p> <p>13      <b>Q. And was this spreadsheet or this</b></p> <p>14      <b>analysis prepared to identify the cash that was</b></p> <p>15      <b>available to be transferred?</b></p> <p>16      A. Yes, that is right, it was part of that</p> <p>17      work</p> <p>18      <b>Q. The next e-mail down from -- the second</b></p> <p>19      <b>e-mail down from the top of the page is an e-mail</b></p> <p>20      <b>from you to Robert Azerad and others, identifying</b></p> <p>21      <b>the 15c3 cash as a component to be added to the</b></p> <p>22      <b>balance sheet. Right?</b></p> <p>23      MR. HUME. Objection to the phrase</p> <p>24      "added to the balance sheet".</p> <p>25      A. The mail was to include within the</p>



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<p>1       <b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>       154</p> <p>2       opening balance sheet the receivable related to</p> <p>3       15c3.</p> <p>4       <b>Q. In that same e-mail you have questions</b></p> <p>5       <b>for Dan. I assume that is Dan Fleming?</b></p> <p>6       A. Correct.</p> <p>7       <b>Q. And you have questions about the</b></p> <p>8       <b>transferring over of collateral that was locked up</b></p> <p>9       <b>for 15c3 needs. Do you see that?</b></p> <p>10      A. Yes, I do</p> <p>11      <b>Q. Do you know if that collateral was</b></p> <p>12      <b>transferred over to Barclays?</b></p> <p>13      A. I don't believe it was</p> <p>14      <b>Q. Do you know what happened to that</b></p> <p>15      <b>collateral?</b></p> <p>16      A. I don't</p> <p>17      (Exhibit 152A marked for identification)</p> <p>18      <b>Q. I have handed you a 3-page document</b></p> <p>19      <b>marked 152A. It is another e-mail chain. Would</b></p> <p>20      <b>you take a look at it, let me know when you are</b></p> <p>21      <b>done.</b></p> <p>22      A. Yes, it is the same chain that we saw</p> <p>23      earlier.</p> <p>24      <b>Q. But a different branch of that chain?</b></p> <p>25      A. It has a couple of extra points at the</p>	<p>1       <b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>       155</p> <p>2       top, which I was not included on.</p> <p>3       (Exhibit 153A marked for identification)</p> <p>4       <b>Q. I have handed you a 2-page document</b></p> <p>5       <b>marked Exhibit 153A. Let me know when you are</b></p> <p>6       <b>done looking at it.</b></p> <p>7       A. Yes.</p> <p>8       <b>Q. The first page is two e-mails, one from</b></p> <p>9       <b>Robert Azerad to you and others. Do you see that?</b></p> <p>10      A. I do.</p> <p>11      <b>Q. Attaching an opening balance sheet?</b></p> <p>12      A. I do.</p> <p>13      <b>Q. And the top e-mail, I guess, is that</b></p> <p>14      <b>document being forwarded to Brett Beldner?</b></p> <p>15      A. Yes.</p> <p>16      <b>Q. And the document attached is the asset</b></p> <p>17      <b>side of the balance sheet, correct?</b></p> <p>18      A. Correct.</p> <p>19      <b>Q. And you were involved in preparing this,</b></p> <p>20      <b>right?</b></p> <p>21      MR. HUME: Objection, lacks foundation.</p> <p>22      A. Robert prepared it. I reviewed it, so</p> <p>23      that is the level of involvement.</p> <p>24      <b>Q. I guess in some of the earlier e-mails</b></p> <p>25      <b>you had some comments about things to be included</b></p>
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<p>1       <b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>       156</p> <p>2       <b>as receivables, et cetera?</b></p> <p>3       A. Correct.</p> <p>4       <b>Q. On this exhibit, Exhibit 153A, were any</b></p> <p>5       <b>derivatives included as part of the total assets?</b></p> <p>6       MR. HUME. Objection, lacks foundation</p> <p>7       A. This includes the assets that I was</p> <p>8       aware of and was limited to the assets that</p> <p>9       I would have some visibility around, and as you</p> <p>10      can see it does not include anything on the</p> <p>11      liability side and it does not have anything on</p> <p>12      derivatives. I didn't have visibility on either</p> <p>13      of those.</p> <p>14      <b>Q. Is it your understanding at some point</b></p> <p>15      <b>the assets side picked up a derivatives component</b></p> <p>16      <b>as well?</b></p> <p>17      A. Yes, that is my understanding.</p> <p>18      <b>Q. If you didn't have visibility on that,</b></p> <p>19      <b>where would that have come from? Who would have</b></p> <p>20      <b>provided that information for the balance sheet?</b></p> <p>21      A. I think the product control team or</p> <p>22      other parts of the finance team. It is perhaps</p> <p>23      worth just saying, there were some other</p> <p>24      components to the transaction which were not</p> <p>25      related just to these series of repos and these</p>	<p>1       <b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>       157</p> <p>2       assets being transferred. For example, there was</p> <p>3       a whole slew of activity around what moved into</p> <p>4       Barclays wealth, so the non-institutional</p> <p>5       business.</p> <p>6       <b>Q. The PIN business?</b></p> <p>7       A. The PIN business, yes, which again I</p> <p>8       didn't have any visibility really into. So I am</p> <p>9       not sure about the sort of accounting there. On</p> <p>10      the derivatives side it was again -- it was not</p> <p>11      something that I really had any visibility around.</p> <p>12      <b>Q. Do you know the economics of the PIN</b></p> <p>13      <b>component of the transaction?</b></p> <p>14      A. I don't, no.</p> <p>15      <b>Q. Have you seen any analysis or valuations</b></p> <p>16      <b>of that?</b></p> <p>17      A. I have not, no. My involvement in that</p> <p>18      has been limited to -- it has been really very</p> <p>19      limited. I am aware of some of the issues with</p> <p>20      transferring assets over and I was involved in</p> <p>21      some of the reconciliations around positions that</p> <p>22      were expected to be transferred over in the</p> <p>23      various conversions but did not get transferred,</p> <p>24      but I have not seen any economics or anything over</p> <p>25      and above that.</p>

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1       HIGHLY CONFIDENTIAL - PAOLO TONUCCI       158

2       **Q. Do you recall there being a customer**

3 **cash component with the PIN transfer?**

4       A. I don't, no

5       (Exhibit 154A marked for identification)

6       **Q. Have you had a chance to review 154A?**

7       A. Not yet. Right.

8       **Q. Have you seen Exhibit 154A before today?**

9       A. No.

10      **Q. Would you turn to the second page of the**

11 **exhibit. You will see it is the calculations we**

12 **saw before, only now there has been a section**

13 **added for liabilities. Do you see that?**

14      A. Yes.

15      **Q. And this spreadsheet as well does not**

16 **have an asset entry for derivatives, right?**

17      A. I cannot see one.

18      **Q. There is a line item under "liabilities"**

19 **for equity, do you see that?**

20      A. I do.

21      **Q. What is your understanding, if any, of**

22 **what that line item is?**

23      A. It is the balancing item.

24      **Q. That is just to balance out the assets**

25 **and liabilities?**

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1       HIGHLY CONFIDENTIAL - PAOLO TONUCCI       160

2       A. I don't know if there were any asset

3 valuation changes, and I certainly was not

4 involved in any asset valuation changes. This

5 exercise, and my recollection of Irina's version

6 of this was purely to clean up the asset

7 classifications.

8       **Q. Do you have 153A before you?**

9       A. Yes

10      **Q. It is this document.**

11      A. Yes

12      **Q. If you turn to the calculation that is**

13 **attached to that exhibit, you will see there is**

14 **some changes in classification but there is also**

15 **a change in the bottom line number. Do you see**

16 **that?**

17      A. Yes.

18      **Q. Do you have any understanding as to why**

19 **the bottom line number had changed? I think both**

20 **of these e-mails are over that same weekend.**

21      A. It is a trivial amount. It is

22 34 million, it is rounding. I don't know what

23 Irina did. It could have been changing the

24 decimal points or something.

25      **Q. The one other change that I see in the**

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1       **HIGHLY CONFIDENTIAL - PAOLO TONUCCI       159**

2       A. That is correct

3       (Exhibit 155A marked for identification)

4       **Q. I have handed you a 2-page document**

5 **marked Exhibit 155A, a cover e-mail and**

6 **a spreadsheet. Let me know when you are done**

7 **reviewing it.**

8       A. Yes.

9       **Q. This cover e-mail is from Irina Veksler.**

10 **Do you see that?**

11      A. Yes.

12      **Q. Do you know who Irina Veksler is?**

13      A. Yes, she works for Robert.

14      **Q. If you look at the spreadsheet, similar**

15 **to the one we saw before, maybe just a few changes**

16 **in the numbers. Do you see that?**

17      A. I do.

18      **Q. This is on Sunday, September 21, 2008,**

19 **if you look at the cover e-mail. What is your**

20 **general recollection of changes to the asset**

21 **valuation that weekend? What were the reasons or**

22 **some of the reasons for changes in the asset**

23 **valuation that weekend?**

24       MR. HUME: Objection to the form and the

25 vagueness of the phrase "asset valuation".

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1       HIGHLY CONFIDENTIAL - PAOLO TONUCCI       161

2       **two spreadsheets, on Exhibit 155A there is now**

3 **a line item for derivatives and other contracts.**

4 **Do you see that?**

5       A. I do.

6       **Q. Do you recall any discussion or**

7 **understanding as to where that line item or why**

8 **that line item was added?**

9       A. No. I think that Irina was going

10 through the GFS classifications, the asset

11 classifications to just clean up the

12 representation of those balances. These are the

13 balances that we were aware of, so those within

14 the repo contracts and the other assets schedule,

15 which was what became Schedule B, and I don't

16 think it was anything more than that. So this is

17 just trying to clean up classification of those

18 assets. She would not have been aware of anything

19 over and above that.

20      **Q. I have handed you what has been**

21 **previously marked as Exhibit 86B, a collection of**

22 **documents. Let me know when you have had a chance**

23 **to review them. It is 3 pages.**

24      A. Yes.

25      **Q. Have you seen this document before**

Page 162	Page 163
<p>1       <b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>       162</p> <p>2       today?</p> <p>3       A. No.</p> <p>4       Q. Are you familiar with this document?</p> <p>5       A. No.</p> <p>6       Q. I will ask you a couple of notations and</p> <p>7       see if they have any meaning to you. There is</p> <p>8       a column, column D, which is titled "PCG value".</p> <p>9       Do you see that?</p> <p>10      A. I do.</p> <p>11      Q. Do you understand what that means?</p> <p>12      A. Product control group value.</p> <p>13      Q. There is a column F titled "PCG</p> <p>14      liquidity value". Do you see that?</p> <p>15      A. I do.</p> <p>16      Q. Do you have any understanding as to what</p> <p>17      that means?</p> <p>18      MR. HUME: Don't speculate.</p> <p>19      A. I don't want to speculate.</p> <p>20      Q. Sir, I am handing you a document that</p> <p>21      was previously marked as Exhibit 87B. Are you</p> <p>22      familiar with that document?</p> <p>23      A. No.</p> <p>24      Q. I am handing you a document marked</p> <p>25      Exhibit 88B. That is a multipage document. If</p>	<p>1       <b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>       163</p> <p>2       you can take a look at that and let me know if you</p> <p>3       are familiar with any of that document.</p> <p>4       A. I have not seen this before.</p> <p>5       Q. If you turn to page 3 of this document,</p> <p>6       Exhibit 88B, there is a spreadsheet with the title</p> <p>7       "Long Island Acquisition Balance Sheet Draft". Do</p> <p>8       you see that?</p> <p>9       A. I do.</p> <p>10      Q. Do you have an understanding as to what</p> <p>11      the Long Island acquisition was?</p> <p>12      A. Yes.</p> <p>13      Q. It is the Lehman/Barclays transaction?</p> <p>14      A. Yes.</p> <p>15      Q. Is this spreadsheet one that you are</p> <p>16      familiar with?</p> <p>17      A. I don't believe I have seen this.</p> <p>18      Q. The documents that were marked as</p> <p>19      Exhibits 86B, 87B and 88B have been described to</p> <p>20      us as spreadsheets containing information provided</p> <p>21      to Barclays' auditors in connection with the</p> <p>22      acquisition. Were you involved in providing any</p> <p>23      information to Barclays' auditors in connection</p> <p>24      with the acquisition?</p> <p>25      A. I was not, no.</p>
Page 164	Page 165
<p>1       <b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>       164</p> <p>2       Q. Did Barclays' auditors ever have</p> <p>3       conversations with you about what they were doing</p> <p>4       to account for the acquisition?</p> <p>5       A. They didn't speak to me, no.</p> <p>6       Q. Or anyone in your group that you are</p> <p>7       aware of?</p> <p>8       A. I believe that they spoke to one or two</p> <p>9       of the more junior people in the group about the</p> <p>10      components in Schedule B, what you would know as</p> <p>11      Schedule B, but I think that that was it</p> <p>12      Q. Do you have any understanding as to the</p> <p>13      questions that they had about Schedule B?</p> <p>14      A. I think mainly it was around the way</p> <p>15      that it was constructed and balances confirmed,</p> <p>16      certainly not to do with valuation</p> <p>17      Q. Of the assets that were transferred from</p> <p>18      Lehman to Barclays, the various pieces of</p> <p>19      collateral, do you have any understanding as to</p> <p>20      whether any of that collateral has been sold by</p> <p>21      Barclays?</p> <p>22      MR. HUME: Objection, lacks foundation.</p> <p>23      A. Again, I would be speculating but --</p> <p>24      MR. HUME: Don't speculate</p> <p>25      A. So I should not</p>	<p>1       <b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>       165</p> <p>2       Q. Who would know about sales of</p> <p>3       collateral, what is sold by Lehman to Barclays and</p> <p>4       that may have been onsold now by Barclays?</p> <p>5       A. I don't know who the best person would</p> <p>6       be. I would assume that someone in Patrick</p> <p>7       Claxton's team would be able to.</p> <p>8       Q. Claxton's team?</p> <p>9       A. Patrick Claxton's team.</p> <p>10      Q. What is his position, Claxton?</p> <p>11      A. He is BarCap CFO.</p> <p>12      MR. TAMBE: Okay. Let's take a break</p> <p>13      and then pick up again.</p> <p>14      (Break for Lunch from 11:53 to 12:33 )</p> <p>15      (Exhibit 156A marked for identification)</p> <p>16      MR. HUME: Before we get started, in</p> <p>17      terms of timing and what we discussed,</p> <p>18      unfortunately the goal was to finish so he could</p> <p>19      preserve his Friday afternoon for work. He has</p> <p>20      things to do, which is why we started at 7.00. He</p> <p>21      is I think realistically to take until 2.00 pm.</p> <p>22      MR. BUNTING: 2:00 or 3:00?</p> <p>23      MR. HUME: 2:00. That was I think the</p> <p>24      time he had in his 7-hour cut-off. Obviously we</p> <p>25      are not saying you are only entitled to that, and</p>

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1           HIGHLY CONFIDENTIAL - PAOLO TONUCCI           166

2     based on what you said before the break it is not

3     clear that an hour and a half will be -- it sounds

4     like an hour and a half will not be enough. We

5     will see. If it is not enough we can arrange to

6     keep it open perhaps. He is here when you are

7     coming back for Claxton on September 4. We can do

8     it the day before or something.

9           MR. TAMBE. Okay, let's get as much

10    progress as we can

11           I have placed before you a document

12    marked Exhibit 156A. It is a cover e-mail and

13    then what appears to be a set of spreadsheets

14    attached to it. Are you familiar with those

15    documents?

16    A. I am.

17    **Q. The cover e-mail, at the top of the**

18    **e-mail it is from you to Duane McLaughlin and**

19    **others. Do you see that?**

20    A. I do.

21    **Q. And what you are doing is providing the**

22    **latest iterations of Schedule A and Schedule B**

23    **part one, as of September 26, 2008. Correct?**

24    A. That is correct.

25    **Q. And this is following a reconciliation**

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1           HIGHLY CONFIDENTIAL - PAOLO TONUCCI           168

2    A. Probably as of the 18th. I am not sure

3    that they were updated subsequently, close of the

4    18th.

5    **Q. Just as a matter of convention, that was**

6    **picked as the valuation date to be used for these**

7    **schedules, was that a conscious decision?**

8    A. No, I mean for convenience, because, you

9    know, systems were not being updated afterwards or

10   we were not getting full feeds from all of the

11   external providers, and it was almost by necessity

12   the reference date that we were using and the

13   reference data, but it was not a conscious

14   decision that it should be as of that date.

15   **Q. Are you aware of a valuation done of**

16   **these securities that are in the spreadsheet**

17   **attached to Exhibit 156A, a valuation that was**

18   **done as of 19 September?**

19    A. I am actually not aware of any explicit

20    valuation done. There have been many I think

21    valuations as of the closing date for recording

22    the transaction, you know, the value of the

23    transaction, so I am not sure which you are

24    referring to. I have not really been part of

25    those.

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1           HIGHLY CONFIDENTIAL - PAOLO TONUCCI           167

2    process that had commenced as early

3    as September 19 and continued post-closing?

4    A. That is correct.

5    **Q. Just a question about the market values**

6    **that are used in these attachments.**

7    A. Yes.

8    **Q. Generally, what is the source of the**

9    **market value information in this document?**

10   A. I believe that that was the --

11   MR. HUME: I am sorry, I need to

12   register an objection. This e-mail looks

13   privileged.

14   MR. TAMBE: How could it be privileged?

15   MR. HUME: It is from September 26 after

16   the transaction and it is between Barclays.

17   MR. TAMBE: And Weil

18   MR. HUME: Where is Weil?

19   MR. TAMBE: David Murgio, Weil cc'd,

20   look at the bottom e-mail

21   MR. HUME: Okay. In both e-mails, okay,

22   all right, sorry about that

23   A. I believe that the valuations were the

24   Lehman source valuations.

25   **Q. As of what date?**

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1           HIGHLY CONFIDENTIAL - PAOLO TONUCCI           169

2    **Q. Who has at Barclays?**

3    A. That would be part of the finance

4    function.

5    **Q. Claxton's group?**

6    A. Claxton.

7    **Q. Claxton's group, right.**

8    **(Exhibit 157A marked for identification)**

9    **I have placed before you a 2-page document marked**

10   **Exhibit 157A. Take a moment to look at it, let me know when**

11   **you are done.**

12   A. Yes.

13   **Q. There is a chain of e-mails between**

14   **David Aronow and yourself?**

15   A. Yes.

16   **Q. The e-mail in the middle of page 1 is**

17   **from David Aronow to you with a CC to Ian Lowitt.**

18   **There is a reference there to the Barclays repo.**

19   **Do you see that?**

20   A. I do.

21   **Q. Towards the middle of that first big**

22   **paragraph in that e-mail it states that:**

23    **"They are not interested in moving forward with**

24    **any more collateral movements from us to them today through**

25    **the process we built and applied yesterday."**

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1           **HIGHLY CONFIDENTIAL - PAOLO TONUCCI**           170

2           **Do you see that?**

3           A. I do.

4           **Q. Do you have an understanding as to what**

5 **that is a reference to?**

6           A. Yes, I think that that is the specific

7 process where collateral was moving from JP Morgan

8 to BONY and had been applied the previous day, so

9 I think that there was an unusual process of

10 pre-agreeing collateral and cash movements and

11 there was not going to be any more of that.

12           **Q. And this was not a limitation on**

13 **movements of other collateral outside of the repo**

14 **process?**

15           A. That was not my interpretation that

16 there was not going to be that -- excuse me, I did

17 not interpret this as meaning that there were not

18 going to be any other movements outside of the

19 repo process.

20           **Q. In terms of the repo process, you**

21 **understood this as an indication from Barclays**

22 **that they considered themselves to be fully**

23 **collateralized applying the haircuts to the repo**

24 **piece?**

25           MR. HUME: Objection, lacks foundation.

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1           **HIGHLY CONFIDENTIAL - PAOLO TONUCCI**           172

2 settlement counterparty role around FX

3 transactions.

4           **Q. And if they were to do that, drawing**

5 **your attention to the bottom of page 1, was the**

6 **understanding that they would stand to get the**

7 **\$1.3 billion of excess cash in the account?**

8           A. The \$1 3 billion of excess cash in the

9 account is I believe the balance with Citibank,

10 and that was a possibility that Citibank would

11 then release that, because they really had been

12 very explicit with the fact that they were holding

13 it against FX activity.

14           **Q. Just to be clear, if Barclays were able**

15 **to step into those transactions they would get the**

16 **benefit of that cash?**

17           MR. HUME: Objection, calls for

18 speculation.

19           A. I think potentially

20           **Q. These e-mails are dated 18 and**

21 **19 September. Do you know if in fact as the**

22 **transaction unfolded whether Barclays did in fact**

23 **step into this position?**

24           A. I believe they did not step into that

25 position.

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1           **HIGHLY CONFIDENTIAL - PAOLO TONUCCI**           171

2 As of what time?

3           MR. TAMBE: As of the date of this

4 e-mail.

5           A. That was what David was saying. I

6 didn't really have an insight into what Barclays

7 were thinking the situation was and I am not too

8 sure that David really knew. I think he may be

9 speculating.

10           **Q. What was David's role?**

11           A. He worked in the operations area.

12           **Q. And he would have been communicating**

13 **with Barclays about the repo mechanics?**

14           A. Around the repo mechanics, yes.

15           (Exhibit 158A marked for identification)

16           **Q. I have handed you a 3-page-exhibit**

17 **marked Exhibit 158A. Just let me know when you**

18 **have had a chance to review it.**

19           A. Yes.

20           **Q. We talked this morning about some**

21 **efforts to identify FX receivables that might be**

22 **transferred to Barclays. Does this e-mail relate**

23 **to that effort?**

24           A. It relates to that and to the more

25 general possibility of Barclays assuming the

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1           **HIGHLY CONFIDENTIAL - PAOLO TONUCCI**           173

2           **Q. Who within Barclays would know whether**

3 **in fact they stepped into that position? You said**

4 **you believe they did not so I want to know if**

5 **there is someone who has better information.**

6           A. I am pretty certain that they didn't

7 step into these transactions.

8           **Q. Is there a reason why they didn't step**

9 **into these transactions?**

10           MR. HUME: Objection, calls for

11 speculation, lacks foundation.

12           A. There were a tremendous volume of

13 transactions, and the analysis required to

14 understand that and the exposures was too great to

15 accomplish in the limited time.

16           **Q. And so what happened with these**

17 **transactions then?**

18           A. They remained with Lehman as the

19 counterparty.

20           (Exhibit 159A marked for identification)

21           **Q. I have placed before you a document**

22 **marked Exhibit 159A, a one page e-mail chain.**

23 **Have you reviewed it?**

24           A. Yes.

25           **Q. At the top of the page there is an**

Page 174		Page 175	
1	<b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI 174</b>	1	<b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI 175</b>
2	e-mail from Anna Yu at Lehman to several people,	2	these balances.
3	including you. Do you see that?	3	(Exhibit 160A marked for identification)
4	A. Yes.	4	<b>Q. I have handed you a one page document</b>
5	<b>Q. There are two items in her e-mail. One</b>	5	<b>marked Exhibit 160A. Let me know when you have</b>
6	<b>is concerning the 15c3-1 segregated cash. Do you</b>	6	<b>had a chance to review it.</b>
7	<b>see that?</b>	7	A. I can see this.
8	A. I do.	8	<b>Q. There is an exchange of e-mails between</b>
9	<b>Q. And we have talked about that before.</b>	9	<b>yourself and Chris O'Meara at Lehman?</b>
10	<b>The second item relates to "Futures seg cash and</b>	10	A. Yes.
11	<b>margin receivables breakout."</b>	11	<b>Q. The second e-mail from the top is an</b>
12	A. Yes.	12	<b>e-mail from Chris O'Meara to you. There is</b>
13	<b>Q. What is that a reference to?</b>	13	<b>a discussion about the 15c3-3 lock up. Towards</b>
14	MR. HUME: Objection, lacks foundation.	14	<b>the end of his e-mail he asks: "Is DTCC issue</b>
15	A. I don't know the details. I can only	15	<b>fatal?" Do you see that?</b>
16	read that it was related to future seg cash and	16	A. I do
17	margin receivables.	17	<b>Q. What was the DTCC issue that he was</b>
18	<b>Q. Do you understand that as related to the</b>	18	<b>referring to, do you know?</b>
19	<b>OCC transactions?</b>	19	A. I believe this was just DTC supporting
20	MR. HUME: Objection, calls for	20	the settlements post-close.
21	speculation.	21	<b>Q. And was there a concern that they would</b>
22	A. The risk system recorded futures,	22	<b>not be supporting the settlements post-close?</b>
23	exchange traded options and FX transactions, and	23	A. There was certainly not any clarity on
24	so I would expect that the OCC transactions would	24	how this was going to work.
25	be recorded on that system and would be a part of	25	<b>Q. You respond to Chris O'Meara's e-mail</b>
Page 176		Page 177	
1	<b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI 176</b>	1	<b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI 177</b>
2	<b>with the line at the top that says "Possibly</b>	2	CROSS-EXAMINATION BY MR. MAGUIRE:
3	<b>fatal", and then you say: "Can you call me re</b>	3	(Exhibit 161A marked for identification)
4	<b>15c3". Do you see that?</b>	4	MR. MAGUIRE: Mr. Tonucci, I have handed
5	A. Um hum	5	you a document we have marked as Exhibit 161A, an
6	<b>Q. Your reference to "possibly fatal", is</b>	6	e-mail exchange between you and Mr. Fleming. You
7	<b>that a reference to the DTCC issue or to the 15c3</b>	7	will see that Mr. Fleming advised you on Sunday,
8	<b>issue?</b>	8	September 21, about the statement from the OCC
9	A. DTCC issue.	9	What was that a reference to?
10	<b>Q. Is there a connection between the DTCC</b>	10	A. It is just a margin statement received
11	<b>issue and the 15c3 issue?</b>	11	from the OCC
12	A. No.	12	<b>Q. And reflects a large excess position</b>
13	<b>Q. Two separate issues?</b>	13	<b>in-house and customer?</b>
14	A. Yes.	14	A. Yes.
15	MR. TAMBE: I think in the interests of	15	<b>Q. What does that mean?</b>
16	time I am going to pass the questioning to other	16	A. That we had excess margin deposited with
17	counsel. I think I am largely done. If we do	17	the exchange.
18	have any clean-up questions we would like to take	18	<b>Q. He goes on to say: "I do not know how</b>
19	you up on your offer to finish examining	19	<b>accessible this is." What did you understand that</b>
20	Mr. Tonucci when we return for the Claxton	20	<b>to mean?</b>
21	deposition. I assume that offer still stands.	21	A. At that time it was not clear what the
22	MR. HUME: If necessary and reasonable	22	clearing banks that serviced our cash payment
23	within the time limit, yes.	23	requirements were going to support, so it was not
24	MR. TAMBE: Thank you, Mr. Tonucci.	24	clear whether JP Morgan Chase, for example, would
25	A. Thank you.	25	actually execute a payment or release a payment.

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1           HIGHLY CONFIDENTIAL - PAOLO TONUCCI           178  
2       So the mechanisms for accessing cash and  
3       transferring cash were at that point unclear  
4       **Q. Was there clarity as to the actual state**  
5       **of the margin at OCC? In other words, was that in**  
6       **real time? Did you know exactly what the excess**  
7       **was?**  
8       A. I didn't.  
9       MR. HUME: Objection, lacks foundation  
10      A. I don't know.  
11      **Q. How did you come to be involved in this**  
12      **e-mail exchange?**  
13      A. Dan worked for me managing the cash  
14      management area and I think he was just trying to  
15      keep me up-to-date on anything that he thought  
16      would be relevant or of interest.  
17      **Q. Had you asked him specifically for any**  
18      **OCC excess?**  
19      A. I don't believe I had.  
20      **Q. Was this part of the effort to find**  
21      **collateral to move to Barclays?**  
22      A. No, it was not.  
23      **Q. You respond to him, you say: "But that**  
24      **may include the value of LCs drawn." What does**  
25      **that mean?**

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1           HIGHLY CONFIDENTIAL - PAOLO TONUCCI           180  
2       the final list of purchased assets.  
3       A. Yes.  
4       **Q. What did you understand is meant by the**  
5       **final list of purchased assets?**  
6       A. The assets which were transferred under  
7       the repo agreement and the other collateral -- I  
8       can't recall the details of this schedule -- the  
9       other collateral, including the unencumbered  
10      assets. I am not sure about the sort of precision  
11      composition of this list, and there is not a lot  
12      of color given in the initial e-mail, so I don't  
13      know if I responded with what was included on  
14      Schedule B.  
15      **Q. You referred to 15c3 lock up of cash of**  
16      **769 million. Do you see that?**  
17      A. Yes.  
18      **Q. And you had told us previously I believe**  
19      **that there was about a billion dollar of cash at**  
20      **Wells Fargo?**  
21      A. Yes.  
22      **Q. The 769, was that cash or securities?**  
23      A. Securities.  
24      **Q. What kind of securities were they?**  
25      A. I believe that they were treasuries.

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1           HIGHLY CONFIDENTIAL - PAOLO TONUCCI           179  
2       A. It was typically the case that there  
3       would be some LCs also deposited with the  
4       exchanges. LCs are letters of credit provided by  
5       third party banks, and I was not sure if that  
6       excess amount reflected the OCC drawing down on  
7       some of those LCs.  
8       **Q. What is the significance of that if**  
9       **there has been a drawdown in LCs?**  
10      MR. HUME: Objection, calls for  
11      speculation.  
12      A. It was certainly not my area of  
13      expertise but, you know, I think a question to ask  
14      was whether they calculated the excess inclusive  
15      of any cash that they may have received from third  
16      party banks.  
17      **Q. Did you find out about that?**  
18      A. I don't recall.  
19      **Q. What is the difference between the house**  
20      **and the customer excess?**  
21      A. I am not sure.  
22      (Exhibit 162A marked for identification)  
23      **Q. I will show you a document we will mark**  
24      **as Exhibit 162A. You will see this is an exchange**  
25      **that starts September 22, with a question about**

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1           HIGHLY CONFIDENTIAL - PAOLO TONUCCI           181  
2       **Q. Are you familiar with the term "cash**  
3       **equivalent"?**  
4       A. I am  
5       **Q. What does that mean to you?**  
6       MR. HUME: Objection, calls for  
7       speculation.  
8       A. Equivalent to cash.  
9       **Q. And the treasuries that were the subject**  
10      **of this lock up, were they equivalent to cash?**  
11      A. I don't think so.  
12      **Q. Why not?**  
13      A. Because I think what goes into cash and  
14      cash equivalent is really overnight money market  
15      investments, and I don't believe these treasuries  
16      were overnight treasuries.  
17      **Q. You use the term "cash" here, cash of**  
18      **769 million. Can you tell us why you used that**  
19      **term, as opposed to securities?**  
20      A. Because it was late and I was exhausted  
21      and so, you know, it is clearly wrong, because I  
22      was absolutely certain that they were securities.  
23      **Q. You use the term "lock up". What does**  
24      **that refer to?**  
25      A. I use the term "15c3 lock up". It is

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1           HIGHLY CONFIDENTIAL - PAOLO TONUCCI           182

2   the entirety of that that is important   It is the

3   amount of cash and securities that was segregated

4   against the 15c3 reserve requirement.

5       **Q. I will show you a document we will mark**

6   **as Exhibit 163A.**

7       **(Exhibit 163A marked for identification)**

8       **This is an e-mail string. You are welcome to look**

9   **at as much of it as you want. I am just going to ask you**

10   **about the top of the page, where Mr. Fleming asks you: "Are**

11   **these the OCC positions that would have been terminated and**

12   **have generated the cash?" Do you see that?**

13       A. Is that not from me to him

14       **Q. I am sorry, you are correct, it is from**

15   **you to Mr. Fleming.**

16       A. Yes.

17       **Q. Can you explain to us what you were**

18   **referring to there?**

19       A. I was looking for clarification on what

20   this statement was and what exactly these

21   positions related to and how they affected the

22   cash position or the margin position. So up to

23   this point I had never seen this report before or

24   this type of report so I was just looking for

25   clarification as to how to interpret it.

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1           HIGHLY CONFIDENTIAL - PAOLO TONUCCI           184

2       A. No.

3       **Q. Can you tell me who Mr. Willoughby is?**

4       A. He was a lawyer at Lehman Brothers.

5       **Q. Was he working in connection with the**

6   **transfer of OCC positions?**

7       A. I don't know

8       **Q. Did you speak with him on or**

9   **about September 30, 2008, concerning the transfer**

10   **of OCC positions to Barclays?**

11       A. Yes, briefly.

12       MR. HUME: Can I state for the record,

13   I thought we had made a request to claw this

14   e-mail back. It is privileged. Are you aware of

15   that?

16       MR. MAGUIRE : I am not aware, but

17   I mean if you can reserve your rights that is

18   fine, but I still intend to ask the witness about

19   his conversation with Mr. Willoughby.

20       MR. HUME: We reserve the right to -- I

21   believe we have clawed it back as privileged and

22   if we have I don't think it is appropriate asking

23   questions about it.

24       MR. MAGUIRE . You can state, you can

25   reserve your rights on that but I believe there

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1           HIGHLY CONFIDENTIAL - PAOLO TONUCCI           183

2       **Q. And you understood the report contained**

3   **positions at OCC?**

4       A. That is correct

5       **Q. What did you mean when you asked the**

6   **question whether these are the positions that**

7   **would have been terminated?**

8       A. I was not sure whether all of the OCC

9   positions had been terminated or whether some

10   positions had remained open, so there was at that

11   time a lack of certainty about which positions had

12   been closed out by the exchanges, and I was not

13   sure if that was applicable to OCC as well. I was

14   aware that the CBOT had closed out some positions.

15   I was just asking the question whether that was

16   the case here.

17       **Q. Did you have any information about any**

18   **close out of positions at OCC?**

19       A. I did not, no.

20       **Q. Did you get any information as a result**

21   **of this question?**

22       A. I don't believe I saw anything more, no

23       **Q. I will show you a document that has**

24   **previously been marked as Exhibit 53. Have you**

25   **seen this e-mail before, sir?**

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1           HIGHLY CONFIDENTIAL - PAOLO TONUCCI           185

2   was testimony at I think Mr. Berkenfeld's

3   deposition that Mr. Willoughby was acting in

4   a business capacity in connection with this That

5   is my understanding. Now, I am free to be

6   corrected but I don't think this is the time or

7   place to do that

8       MR. HUME: It is the time and the place

9   if we have clawed the e-mail back. Do you take

10   the position even if we have clawed it back

11   that --

12       MR. MAGUIRE : I believe you are

13   entitled to reserve your rights as to the e-mail

14   I am not aware that you have clawed it back.

15       MR. HUME: We can determine that in one

16   minute off the record and I would like to do that,

17   because if we have clawed it back I don't think

18   you are allowed to ask questions about it, unless

19   and until you have successfully challenged the

20   privilege asserted.

21       MR. MAGUIRE : Okay. If you are taking

22   the position that you want to direct the witness

23   not to answer the questions, that is fine, but I

24   don't think the questions I am asking would be

25   objectionable whether or not there was any claw



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<p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 186</p> <p>2 back</p> <p>3 MR. HUME: Let's put the document aside</p> <p>4 and just ask the questions.</p> <p>5 MR. MAGUIRE . Let me ask you directly</p> <p>6 then.</p> <p>7 MR. HUME: Put the document aside,</p> <p>8 ignore the document and answer the questions.</p> <p>9 MR. MAGUIRE In September 2008 you had</p> <p>10 some discussions with people at Barclays</p> <p>11 concerning some open issues under the transfers of</p> <p>12 assets from Lehman to Barclays. Isn't that</p> <p>13 correct?</p> <p>14 A. There were a variety of conversations,</p> <p>15 yes.</p> <p>16 Q. And in connection with OCC positions you</p> <p>17 identified two, what you described as the main</p> <p>18 open issues concerning the transfer. Isn't that</p> <p>19 correct?</p> <p>20 A. I can't really recall the specifics.</p> <p>21 Q. Do you recall that one specific that you</p> <p>22 identified as an open issue was in connection with</p> <p>23 the transfer of OCC positions, the extent to</p> <p>24 whether that was only with the amount, the minimum</p> <p>25 amount necessary to support the collateral and</p>	<p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 187</p> <p>2 exchange the OCC. Do you recall that, sir?</p> <p>3 A. I recall asking the question. I should</p> <p>4 clarify that I had not seen the APA and so I would</p> <p>5 not really have an understanding of what had been</p> <p>6 agreed I was just asking the question.</p> <p>7 Q. And you were asking the question whether</p> <p>8 Barclays was entitled to anything from the</p> <p>9 Lehman's position at OCC beyond the collateral</p> <p>10 that was necessary to support specific positions?</p> <p>11 MR. HUME. To the extent you were asking</p> <p>12 that question of a lawyer, it is privileged. You</p> <p>13 should not reveal either the question asked or the</p> <p>14 answer given.</p> <p>15 A I honestly do not recall the specifics</p> <p>16 of that conversation My reason for interest</p> <p>17 would have been to help direct the group that</p> <p>18 worked for me in cash management to provide the</p> <p>19 relevant analytical support or information. I</p> <p>20 don't really have a view on what the entitlement</p> <p>21 was or an understanding, and I am not a lawyer.</p> <p>22 Q. I am not asking you for a legal view,</p> <p>23 sir. Can you explain to us the difference between</p> <p>24 the amount necessary to support a position at OCC</p> <p>25 and an amount that is not limited by that? Can</p>
Page 188	Page 189
<p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 188</p> <p>2 you just explain that distinction for us?</p> <p>3 MR. HUME: Objection. He testified he</p> <p>4 is not expert in the OCC issues</p> <p>5 A. I was asking very open questions because</p> <p>6 I don't really know the specific mechanics around</p> <p>7 this, so this was just a better understanding so</p> <p>8 that I could then help my team provide the sort of</p> <p>9 necessary supporting information So I am asking</p> <p>10 these questions in a general way.</p> <p>11 Q. And you don't have an understanding as</p> <p>12 to whether Barclays was entitled to anything in</p> <p>13 terms of OCC margin beyond what was necessary to</p> <p>14 support specific positions?</p> <p>15 MR HUME: Objection to the form of the</p> <p>16 question.</p> <p>17 A. I don't have a view or an understanding</p> <p>18 of what the entitlement was, full stop. I had not</p> <p>19 seen the APA I don't have -- I am not a lawyer</p> <p>20 and I have not reviewed it in relation to this, in</p> <p>21 relation to these series of positions.</p> <p>22 Q. Did you ever discuss this question with</p> <p>23 Ian Lowitt?</p> <p>24 A. I don't believe so.</p> <p>25 Q. Did you ever discuss this with any other</p>	<p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 189</p> <p>2 business person?</p> <p>3 A. I can't recall having done so.</p> <p>4 Q. Did you discuss this with anyone else,</p> <p>5 whether a lawyer or not, who was acting in</p> <p>6 a business capacity?</p> <p>7 MR HUME. If it was a lawyer, you</p> <p>8 should not answer.</p> <p>9 A I don't recall.</p> <p>10 Q. When you talked to Mr. Willoughby, was</p> <p>11 he practising as a lawyer? Was he a lawyer, in</p> <p>12 other words, who actually was providing legal</p> <p>13 advice?</p> <p>14 A. Yes.</p> <p>15 Q. Or was he somebody who had a business</p> <p>16 function at Barclays?</p> <p>17 A. I thought of him as a lawyer.</p> <p>18 Q. Did you obtain any legal advice from</p> <p>19 Mr. Willoughby?</p> <p>20 MR. HUME: Objection. You are not</p> <p>21 entitled to get that information</p> <p>22 Q. Only "yes" or "no".</p> <p>23 MR HUME: I am instructing the witness</p> <p>24 not to answer that.</p> <p>25 A I am not going to answer</p>

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1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 190

2 MR. HUME: He is not qualified to

3 articulate what is legal advice and it is

4 privileged.

5 Q. Fine. Let me ask you, did you obtain

6 any advice from Mr. Willoughby?

7 MR. HUME: Objection. Don't answer.

8 Q. I am not asking for the substance of any

9 advice I just want to know did Mr. Willoughby

10 respond and provide you with any advice following

11 that discussion that you had?

12 MR. HUME: Object to the

13 characterization of whether there was

14 a communication. You can ask whether there was

15 a communication from Mr. Willoughby.

16 A. I don't recall.

17 Q. You don't recall receiving any

18 communication from Mr. Willoughby in response to

19 the discussion that you had in late September?

20 A. That is right.

21 Q. And you don't recall following up with

22 Mr. Willoughby concerning that communication?

23 A. That is right.

24 Q. So as far as you recall, you have never

25 touched this subject since that one discussion you

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1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 192

2 Q. What were the different places where

3 those assets were --

4 A. DTCC, JP Morgan, Euroclear. I can't

5 remember the name of the Canadian depository, so

6 those are the ones that I remember

7 Q. At any time was Schedule B limited to

8 the unencumbered assets at DTC?

9 A. Not that I am aware of.

10 Q. I will show you a document we will mark

11 as 164A.

12 (Exhibit 164A marked for identification).

13 If we start at the bottom, you will see there is

14 an e-mail that then gets sent to you on 18 September, and

15 then you forward to Mr. Azerad. Do you see that?

16 A. I do.

17 Q. And the chain starts with what is called

18 a box summary. Can you tell me what the box

19 summary is?

20 A. Yes, it is the securities in possession,

21 in the clearance box.

22 Q. When you say "clearance box", is that

23 the clearance box at DTC?

24 A. No, it could mean any number of

25 custodial or depository arrangements.

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1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 191

2 had with Mr. Willoughby in late September, 2008?

3 A. Certainly not that -- I don't recall

4 speaking to Scott Willoughby and I would say that

5 my involvement in this transaction subsequent to

6 that was minimal.

7 Q. And you don't recall discussing this,

8 this I mean in the OCC positions and Barclays'

9 entitlement since September 2008 with anyone?

10 A. No, I don't believe I have discussed

11 with anyone

12 Q. You testified earlier about unencumbered

13 assets, and specifically I want to ask you about

14 Schedule B that you mentioned. Where were the

15 assets that are listed on Schedule B physically

16 located?

17 A. There were very many versions of

18 Schedule B so you are going to have to be more

19 specific.

20 Q. I am just now looking only for your

21 understanding as to where they were physically

22 custodied. If it is more than one place or

23 changed over time, let me know?

24 A. That is what I am saying, it was more

25 than one place and it changed over time.

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1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 193

2 Q. Then you will see Mr. Azerad's e-mail

3 says: "FYI, 3.2 billion at risk." Can you explain

4 what "3.2 billion at risk" means?

5 A. I don't think I can.

6 Q. Did you have an understanding at the

7 time that you received this e-mail?

8 A. I am assuming the 3 2 billion is the

9 "stays at LBI" position. I am not too sure what

10 the "at risk" means.

11 MR. HUME: Don't speculate.

12 Q. In your e-mail you say: "That seems very

13 high. What are the assets they need to sell?"

14 Does that help you to understand what you were

15 hearing here and what you were following up with?

16 A. Not really. I mean, there was a lot

17 going on, and I am sure you have seen that there

18 were a lot of e-mails that I was getting, so

19 responses like that could be quite open, just

20 because I don't really know what was going on and

21 I was trying to get information from others.

22 Q. What was the Sparrow report?

23 A. Charlie Sparrow was the mortgage trader,

24 he was the head of the mortgage desk, so I think

25 it was his report of positions.

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<p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 194</p> <p>2 Q. I will show you a document we will mark</p> <p>3 as Exhibit 165A.</p> <p>4 (Exhibit 165A marked for identification).</p> <p>5 I would like to start with Mr. Blackwell's e-mail</p> <p>6 to you, sir, in which he says:</p> <p>7 "We need to fund DTC 1.2 billion to allow</p> <p>8 settlement."</p> <p>9 A. Which one are you looking at?</p> <p>10 Q. Did I give you the wrong document? No,</p> <p>11 sorry, I gave you the wrong document. Let's mark</p> <p>12 this as Exhibit 166A.</p> <p>13 (Exhibit 166A marked for identification)</p> <p>14 Q. Mr. Blackwell asks: "We need to fund DTC</p> <p>15 1.2 billion to allow settlement and we need to</p> <p>16 call with Chase." Can you tell me, what was your</p> <p>17 understanding as to why there is a need to fund</p> <p>18 1.2 billion to DTC?</p> <p>19 A. To facilitate the DTC settlement</p> <p>20 process, there was often a prefunding requirement.</p> <p>21 You would get the cash back at the end of the day</p> <p>22 but intra day they would require funding in order</p> <p>23 to essentially grease the wheels and initiate the</p> <p>24 settlement chain.</p> <p>25 Q. This is to clear trades?</p>	<p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 195</p> <p>2 A. That is right, to clear trades.</p> <p>3 Q. You responded: "Don't know how we can do</p> <p>4 this". Do you know how this ultimately was</p> <p>5 resolved?</p> <p>6 A. I don't.</p> <p>7 Q. If you turn back to the previous</p> <p>8 document I gave you, Exhibit 165A, here Mr. Azerad</p> <p>9 notes that: "We managed to pledge over about</p> <p>10 800 million in MV." Do you understand that to be</p> <p>11 market value?</p> <p>12 MR. HUME Excuse me, you say Mr. Azerad</p> <p>13 notes?</p> <p>14 A. It is Jim Hraska.</p> <p>15 MR. MAGUIRE : Quite right, strike that.</p> <p>16 MR. HUME: Is there a reason it begins</p> <p>17 with a cc at the top?</p> <p>18 MR. MAGUIRE : I am not aware of any.</p> <p>19 MR. HUME. Object to the form of the</p> <p>20 document but go ahead. We have never seen it</p> <p>21 before</p> <p>22 MR. MAGUIRE : You did receive this, did</p> <p>23 you not, sir, this e-mail?</p> <p>24 A. I guess so.</p> <p>25 MR. HUME: Don't guess. Do you remember</p>
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<p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 196</p> <p>2 receiving it is the question.</p> <p>3 A I don't remember receiving it</p> <p>4 Q. My only question is this is a reference</p> <p>5 here to a pledge of 800 million to Barclays?</p> <p>6 A Um hum.</p> <p>7 Q. Can you tell me what was Lehman doing on</p> <p>8 Friday, September 19, pledging 800 million to</p> <p>9 Barclays?</p> <p>10 MR. HUME: Objection, calls for</p> <p>11 speculation and lacks foundation Don't</p> <p>12 speculate. Only speak to what you know.</p> <p>13 A. I don't know.</p> <p>14 Q. Do you have any knowledge of any</p> <p>15 collateral being pledged to Barclays</p> <p>16 on September 19?</p> <p>17 A. I do have knowledge of that.</p> <p>18 Q. What knowledge do you have?</p> <p>19 A. The details of some securities that were</p> <p>20 pledged I think became Schedule B1, and I am not</p> <p>21 sure when I sort of became really conscious of</p> <p>22 these. I don't remember seeing this mail.</p> <p>23 Certainly at that point I had not seen any</p> <p>24 details, so it was after that.</p> <p>25 Q. So you had knowledge that some</p>	<p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 197</p> <p>2 collateral was being pledged to Barclays?</p> <p>3 A. I have knowledge that some collateral</p> <p>4 was pledged to Barclays. I am not aware of having</p> <p>5 knowledge at the time it was being pledged.</p> <p>6 Q. When did you learn that it had been</p> <p>7 pledged to Barclays?</p> <p>8 MR. HUME. Object to the vagueness of</p> <p>9 the word "pledged" in this line of questioning.</p> <p>10 A. I think late on the 19th, perhaps on the</p> <p>11 20th.</p> <p>12 Q. Did you understand -- I will use the</p> <p>13 word "transfer" maybe. Did you understand the</p> <p>14 business reason why this collateral had been</p> <p>15 transferred to Barclays?</p> <p>16 A. Not specifically, but I would assume as</p> <p>17 part of the sales agreement.</p> <p>18 Q. And when did the transfer physically</p> <p>19 occur?</p> <p>20 MR. HUME Objection, calls for</p> <p>21 speculation.</p> <p>22 A I think I can only say that the</p> <p>23 transfers that happened that Jim is referring to</p> <p>24 appear to have happened on the 19th I am aware</p> <p>25 that there were actually subsequent transfers.</p>

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2           **Q. In the following week?**

3           A. Yes, in the following week.

4           **Q. How did you come to learn about these**

5 **transfers?**

6           A. I believe that Jim Hraska made me aware

7 of them.

8           **Q. What did he tell you about them?**

9           A. This is the transfers on the 19th I am

10 referring to. I don't remember getting any

11 specifics from him.

12           **Q. How did you come to learn that they were**

13 **part of the sale agreement?**

14           A. I didn't come to learn of that. I was

15 saying that that was my assumption, that would be

16 my assumption.

17           **Q. Did you ever get any information from**

18 **anyone as to whether or not they were part of the**

19 **sale agreement?**

20           MR. HUME: Objection to form

21           A. I don't think so. I don't know What

22 do you have in mind?

23           **Q. I am just trying to understand. I am**

24 **trying to learn what you know about those**

25 **transfers, whether you learned about it on the**

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2           they can count the 800 million delivered to Barclays on

3 Friday. Do you see that, sir?

4           A I do

5           **Q. Can you tell us what the issue was that**

6 **Mr. Azerad and you were communicating about here?**

7           A. It is just a representation of the

8 unencumbered collateral that was being included as

9 transferable.

10           **Q. When you say "the representation", what**

11 **do you mean?**

12           A. In order to represent it accurately in

13 the opening balance sheet or in the various

14 agreements, we just wanted to be clear on how this

15 was going to be -- how this should be recorded

16 So I think Robert is asking the question: are we

17 treating the 800 million they got transferred on

18 the Friday as part of the unencumbered collateral

19 schedule?

20           **Q. And what was the answer to that**

21 **question?**

22           A. I don't see an answer to that. I think

23 we are asking -- Ian was asking that we get

24 a legal confirmation, and I don't recall seeing

25 one.

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2           19th or whether you learned about it the following

3 week or even subsequently to that?

4           MR. HUME: Objection, asked and

5 answered.

6           A. My recollection was that I learned that

7 either late on the 19th or the 20th, but when you

8 ask about the sales agreement I am not sure what

9 you have in mind.

10           **Q. I don't have anything in mind. I am**

11 **just trying to understand what was the business**

12 **reason for the transfer to Barclays. If your**

13 **understanding is that it was part of the sale**

14 **agreement, I just want to confirm that.**

15           A. That is my understanding

16           **Q. Do you have any different understanding?**

17           A. I don't have any different

18 understanding.

19           **Q. I will show you a document we will mark**

20 **as Exhibit 167A.**

21           (Exhibit 167A marked for identification)

22           If we start at the beginning of the string, the

23 second page, sir, chronologically the beginning, Mr. Azerad

24 is informing you that he found 700 million in the DTC box,

25 and at the end of his e-mail the key question is whether

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2           **Q. Where did the 800 million collateral**

3 **come from?**

4           A. I think it was from the DTC, one of the

5 DTC accounts.

6           **Q. I will show you a document we will mark**

7 **as Exhibit 168A.**

8           (Exhibit 168A marked for identification)

9           If we start at the first e-mail you received,

10 Saturday, September 20 e-mail, on the second page, you were

11 copied on that e-mail from Mr. Forrest, right?

12           A. Yes.

13           **Q. You see the subject is "Re:**

14 **1.9 billion."**

15           A. Yes.

16           **Q. What is the significance of the 1.9?**

17           A. The 1.9 billion was the initial estimate

18 of the unencumbered collateral.

19           **Q. And at the time of that, of that initial**

20 **estimate, do you remember where that collateral**

21 **was custodied or whether it was in more than one**

22 **place?**

23           A. It was in a number of places.

24           **Q. The first item here is 800 million at**

25 **BONY. Do you know whether that is reference to**

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1	<b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b> 202	1	<b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b> 203
2	the 800 million that had been transferred on the	2	A. Not really. I mean I think, as Ian
3	Friday?	3	says, it is more important just to be accurate.
4	A. I don't. I would assume so.	4	<b>Q. You had mentioned that you had heard I</b>
5	MR HUME: Don't assume. Don't	5	believe on the Friday that there was a need for
6	speculate.	6	additional collateral in order for the transaction
7	<b>Q. The next is: "We have 746 million in</b>	7	to close; that was something that Mr. Lowitt told
8	<b>074." Do you recognize that as a DTC box?</b>	8	<b>you?</b>
9	A I do	9	A. Um hum
10	<b>Q. You will see number 4 says: "We have</b>	10	<b>Q. And he reiterated that a number of times</b>
11	<b>identified another 300 million of mortgages in</b>	11	<b>during the day?</b>
12	<b>636." Do you know what 636 is a reference to?</b>	12	A. Yes.
13	A. Another DTC box or account.	13	<b>Q. Did he tell you how much additional</b>
14	<b>Q. And Mr. Forrest says: "That is a total</b>	14	<b>collateral would be needed to make the transaction</b>
15	<b>of 2.181 billion." Do you see that, sir?</b>	15	<b>close?</b>
16	A. Yes.	16	A. I thought -- no, I don't remember the
17	<b>Q. Was there a specific target that people</b>	17	total It was more than 2 billion.
18	<b>were shooting for, a specific total people were</b>	18	<b>Q. Was there a number that he gave you and</b>
19	<b>trying to get to?</b>	19	<b>you don't remember what that is now?</b>
20	A. Not really.	20	A. I don't remember what it was. I don't
21	<b>Q. So people were kind of keeping score of</b>	21	remember if he gave me a number and I don't
22	<b>what they found but there was not any number that</b>	22	remember what it was
23	<b>you had in mind as a target that you needed to get</b>	23	<b>Q. Over the course of the next couple of</b>
24	<b>to?</b>	24	<b>days, the Saturday and the Sunday, did you hear of</b>
25	MR. HUME: Objection to the form.	25	<b>a target, a number that was needed in order to</b>
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1	<b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b> 204	1	<b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b> 205
2	close the transaction?	2	<b>Q. Who did you hear from?</b>
3	A. I think we had gone to the bankruptcy	3	A. From Chris O'Meara.
4	court on Friday with the unencumbered collateral	4	<b>Q. Who was Chris O'Meara?</b>
5	at 1.9 billion, so that was our initial estimate,	5	A. He was at Lehman Brothers. He had been
6	and then a further billion or so in the 15c3	6	head of risk.
7	reserve account, so that would give nearly	7	<b>Q. What did Chris O'Meara tell you about</b>
8	\$3 billion. I think that that is what everyone	8	<b>the hearing?</b>
9	was expecting the value of the unencumbered	9	A. That it was long and seemed to have gone
10	collateral plus the 15c3 to be.	10	well, and that the court had approved the sale.
11	<b>Q. When you say "we went to the bankruptcy</b>	11	<b>Q. Did he tell you anything else?</b>
12	<b>court", you are describing what everybody's</b>	12	A. No.
13	<b>expectation was at the time everybody went down to</b>	13	<b>Q. Did he tell you anything about any</b>
14	<b>the bankruptcy court hearing?</b>	14	<b>proceedings that had happened in the course of the</b>
15	MR. HUME: Objection to the form,	15	<b>hearing?</b>
16	calling for speculation about what other people's	16	A. No, he kept it to a minimum.
17	expectations were	17	<b>Q. Did you hear from anyone else other than</b>
18	<b>Q. That certainly was your understanding?</b>	18	<b>Chris O'Meara about the hearing?</b>
19	A. It was my understanding	19	A. I did not
20	<b>Q. Did you attend the hearing before the</b>	20	<b>Q. I will show you a document we will mark</b>
21	<b>bankruptcy court?</b>	21	<b>as Exhibit 169A.</b>
22	A. I did not.	22	(Exhibit 169A marked for identification).
23	<b>Q. Did you hear from anybody who did</b>	23	The subject of these e-mails is "PL on 9/18". Do
24	<b>attend?</b>	24	<b>you have an understanding what "PL" refers to?</b>
25	A. Yes.	25	A. I am not sure here. I am not

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<p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 206</p> <p>2 understanding these mails.</p> <p>3 Q. Do you have any understanding just as to</p> <p>4 what the letters capital P and capital L stand</p> <p>5 for?</p> <p>6 MR. HUME: Objection, calls for</p> <p>7 speculation. He has already testified he does not</p> <p>8 know</p> <p>9 A. I don't know.</p> <p>10 Q. You will see that there is a reference</p> <p>11 here to your expecting 3.1 billion, and that is</p> <p>12 contrasted with finding only 1.9 billion. Can you</p> <p>13 explain to us what your expectation was?</p> <p>14 MR. HUME: Objection, lacks foundation.</p> <p>15 A. I don't know. I don't know where that</p> <p>16 number has come from. I don't have a recollection</p> <p>17 of expecting that or communicating that to Irina.</p> <p>18 Q. Your e-mail says: "My previous answer</p> <p>19 was as of Friday night".</p> <p>20 A. It is not my e-mail.</p> <p>21 Q. You are right, it is Mr. Azerad's e-mail</p> <p>22 to you, and his previous answer was as of Friday</p> <p>23 night and Irina's answer is as of Thursday night.</p> <p>24 Does that assist you in any way?</p> <p>25 A. No.</p>	<p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 207</p> <p>2 Q. I will show you a document we will mark</p> <p>3 as Exhibit 170A.</p> <p>4 (Exhibit 170A marked for identification)</p> <p>5 First, sir, can you tell me what prompted you to</p> <p>6 send the first e-mail here, just before 4:00 am on</p> <p>7 Monday, September 22?</p> <p>8 A. I can't remember.</p> <p>9 Q. You say:</p> <p>10 "You should plan on moving all the unencumbered</p> <p>11 collateral in the DTC box first thing".</p> <p>12 Did you have an understanding then as to what the</p> <p>13 value of the unencumbered collateral in the DTC box was?</p> <p>14 A. Only the estimates.</p> <p>15 Q. And what was the estimate you had at</p> <p>16 this time?</p> <p>17 A. I don't remember.</p> <p>18 Q. Did you follow up on this instruction?</p> <p>19 A. I don't remember. This is 4.00 in the</p> <p>20 morning as the transaction was being sort of</p> <p>21 finalized, and I had been up all night, in front</p> <p>22 of the Creditors Committee for much of it, so you</p> <p>23 know it may well be that -- I mean there are going</p> <p>24 to be things that I just don't remember about I</p> <p>25 was quite tired.</p>
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<p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 208</p> <p>2 Q. I am sure you were. My only question is</p> <p>3 whether there was something specifically that made</p> <p>4 you at 4 o'clock in the morning send this</p> <p>5 particular e-mail?</p> <p>6 A. I don't recall it</p> <p>7 Q. I will show you a document we will mark</p> <p>8 as Exhibit 171A.</p> <p>9 (Exhibit 171A marked for identification)</p> <p>10 Q. The transfers to the BONY records, this</p> <p>11 refers to the assets transferred on Friday?</p> <p>12 A. Yes</p> <p>13 Q. Is it your understanding that was the</p> <p>14 800 million that was transferred on Friday that</p> <p>15 was the subject of some of the earlier e-mails</p> <p>16 that we looked at?</p> <p>17 A. I believe so.</p> <p>18 Q. You had referred to I think Schedule B1</p> <p>19 or .1 I think in your earlier testimony. Is that</p> <p>20 what is referred to here as the first part of the</p> <p>21 Schedule B?</p> <p>22 A. Yes.</p> <p>23 Q. Did I understand you earlier to say that</p> <p>24 another group was responsible ultimately for</p> <p>25 determining the exact assets that should be in</p>	<p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 209</p> <p>2 Schedule B and should not be in Schedule B?</p> <p>3 A. Yes.</p> <p>4 Q. Was that Mr. Claxton's group?</p> <p>5 A. No, Mr. Claxton is at BarCap. It was</p> <p>6 Mr. Blackwell, who is the head of the operations</p> <p>7 area and was therefore in the best place to</p> <p>8 determine what assets were held.</p> <p>9 Q. I will show you a document previously</p> <p>10 marked as Exhibit 85B. With respect to the list</p> <p>11 of exhibits that are attached here, 1 to 8, were</p> <p>12 you involved, sir, in the preparation of any of</p> <p>13 those?</p> <p>14 A. I don't think directly but some of this</p> <p>15 may have come from my team.</p> <p>16 Q. Did you attend the APA scheduled meeting</p> <p>17 on September 30?</p> <p>18 A. I don't recall.</p> <p>19 Q. Were there any APA scheduled meetings</p> <p>20 that you remember attending?</p> <p>21 A. I remember attending one meeting on</p> <p>22 this. It may well have been this one.</p> <p>23 Q. What happened at that meeting?</p> <p>24 A. It was I think, as I recall, almost</p> <p>25 entirely dedicated to trying to explain the</p>

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<p>1           HIGHLY CONFIDENTIAL - PAOLO TONUCCI           210</p> <p>2   sequence of transactions</p> <p>3       <b>Q. Which transactions?</b></p> <p>4       A. The various repo transactions and</p> <p>5   collateral transfers</p> <p>6       <b>Q. Who was at that meeting?</b></p> <p>7       A. I don't recall.</p> <p>8       <b>Q. Do you recall anyone who was present at</b></p> <p>9   <b>the meeting?</b></p> <p>10      A. Not by name.</p> <p>11      <b>Q. If you turn to the first exhibit, the</b></p> <p>12   <b>APA lead sheet.</b></p> <p>13      A. Yes.</p> <p>14      <b>Q. Can you tell us what the elements of the</b></p> <p>15   <b>top part, which describe the securities</b></p> <p>16   <b>transferred under Barclays repo agreement, the</b></p> <p>17   <b>total transferred under the repo agreement, what</b></p> <p>18   <b>does that refer to?</b></p> <p>19      A. The assets transferred on the Thursday</p> <p>20   night repo.</p> <p>21      <b>Q. And the reference to "Fed settled" and</b></p> <p>22   <b>"DTC settled", what does that mean?</b></p> <p>23      A. I think we have covered this but it is</p> <p>24   Fed wirable securities and DTC settled securities.</p> <p>25      <b>Q. And then the next is the unencumbered</b></p>	<p>1           HIGHLY CONFIDENTIAL - PAOLO TONUCCI           211</p> <p>2   box as of Sunday 9/21/08, APA clearance boxes, APA</p> <p>3   Schedule B?</p> <p>4       A. Yes.</p> <p>5       <b>Q. Underneath that it has "Positions not</b></p> <p>6   <b>with no memo seg, positions with memo seg", and</b></p> <p>7   <b>a sub-total of those positions?</b></p> <p>8       A. Yes.</p> <p>9       <b>Q. What was your understanding as to what</b></p> <p>10   <b>they referred to?</b></p> <p>11      A. They refer to securities identified at</p> <p>12   the DTC, within the DTC box.</p> <p>13      <b>Q. And underneath that is 636, that is</b></p> <p>14   <b>another DTC box?</b></p> <p>15      A. That is a different DTC box.</p> <p>16      <b>Q. And that gives a total for the positions</b></p> <p>17   <b>as of Sunday, September 21; is that correct?</b></p> <p>18      A. That is correct.</p> <p>19      <b>Q. And then the next section is the Friday</b></p> <p>20   <b>9/26 transfers. What does that refer to?</b></p> <p>21      A. The Friday -- I think that is wrong</p> <p>22   actually. I am not sure.</p> <p>23      <b>Q. When you say you think it is wrong, why</b></p> <p>24   <b>do you say that?</b></p> <p>25      A. I don't think there was -- I don't know</p>
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<p>1           HIGHLY CONFIDENTIAL - PAOLO TONUCCI           212</p> <p>2   why it says 9/26. Maybe it means Friday 19th.</p> <p>3       <b>Q. So there were certainly transfers on</b></p> <p>4   <b>a Friday and it was either the 19th or the 26th or</b></p> <p>5   <b>maybe both, you don't know?</b></p> <p>6       A. Yes. I don't think there were any</p> <p>7   transferred on the 26th though.</p> <p>8       <b>Q. What about the Monday transfers? What</b></p> <p>9   <b>does that refer to?</b></p> <p>10      A. There were some further transfers on I</p> <p>11   believe -- I think it was on the Monday.</p> <p>12      <b>Q. Saying Monday, are we now talking about</b></p> <p>13   <b>the 22nd?</b></p> <p>14      A. Yes, I think so.</p> <p>15      <b>Q. Then there is another line for "Monday</b></p> <p>16   <b>transfers par amount". What does that mean.</b></p> <p>17      A. I don't know.</p> <p>18      <b>Q. Then for the total unencumbered box it</b></p> <p>19   <b>is about 2.6 billion. Do you see that?</b></p> <p>20      A. Yes, I see that.</p> <p>21      <b>Q. Is that a reference to the clearance box</b></p> <p>22   <b>at DTC?</b></p> <p>23      MR. HUME: Objection, lacks foundation</p> <p>24      A. No, I don't think so.</p> <p>25      <b>Q. What do you understand the unencumbered</b></p>	<p>1           HIGHLY CONFIDENTIAL - PAOLO TONUCCI           213</p> <p>2   box to refer to?</p> <p>3       A. It could be the unencumbered, you know,</p> <p>4   it is just a sub-total, not even one that looks as</p> <p>5   though it was right to me. It looks to me as</p> <p>6   though there has been double counting in this.</p> <p>7   You can see this yourself but the 269 appears</p> <p>8   twice and shows up in the sub-total or in the</p> <p>9   total. That cannot be right.</p> <p>10      <b>Q. Do you know whether this was corrected?</b></p> <p>11      A. I don't know. I didn't prepare it. I</p> <p>12   don't recall seeing a revised version.</p> <p>13      <b>Q. What do you understand the total</b></p> <p>14   <b>unencumbered box to refer to?</b></p> <p>15      A. It was an estimate of the unencumbered</p> <p>16   collateral but I am not sure if it was specific to</p> <p>17   just DTC.</p> <p>18      <b>Q. Who would be the person who would know</b></p> <p>19   <b>best what specifically was at DTC and what</b></p> <p>20   <b>transfers were made from the DTC box at any</b></p> <p>21   <b>particular date?</b></p> <p>22      A. Jim Hraska.</p> <p>23      <b>Q. I will show you a document previously</b></p> <p>24   <b>marked as Exhibit 48. If we start with the first</b></p> <p>25   <b>e-mail chronologically, you are copied on an</b></p>

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2   e-mail from Mr. Lowitt to Mr. McDade and

3   Mr. Berkenfeld. Do you see the question there:

4   "Did the court accept the 15c3 lock up and

5   unencumbered box make it through to BarCap." Do

6   you see that question?

7       A. I see that, yes.

8       **Q. Did you hear any response or understand**

9   **what the answer to that question was?**

10      A. I didn't receive a response.

11      **Q. Did you discuss that issue with anybody?**

12      A. This is not to be facetious but this is

13   what we have been talking about so I think I have

14   discussed it with lots of people over the past

15   year.

16      **Q. I am not talking now generally about the**

17   **15c3 lock up or the unencumbered box. I am asking**

18   **specifically about whether the court accepted --**

19      A. I didn't speak to anyone about that

20      **Q. We will mark this as Exhibit 172A.**

21           (Exhibit 172A marked for identification)

22           **The first e-mail is a Saturday e-mail from**

23   **Mr. Lowitt to you.**

24      A. Yes.

25      **Q. He says:**

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2   meant?

3      A. I did.

4      **Q. What did he mean?**

5      A. He meant that in spite of all the work

6   that we had put in this was important to closing

7   the transaction.

8      **Q. Did you have any further follow-up with**

9   **Mr. Lowitt concerning the 15c3 or the unencumbered**

10   **box?**

11      A. I am sure I did.

12      **Q. Do you recall any?**

13      A. I don't recall specifics, no.

14      **Q. We will mark this as Exhibit 173A.**

15           (Exhibit 173A marked for identification)

16           **You testified earlier, sir, that you**

17   **understood that any transfer would be subject, and**

18   **this is specifically with respect to 15c3, that**

19   **any transfer would require regulatory approval?**

20      A. Yes.

21      MR. HUME: Objection, mischaracterizes

22   the testimony He cannot testify as to what was

23   required.

24      **Q. What was your understanding as to what**

25   **kind of regulatory approval was required?**

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1           **HIGHLY CONFIDENTIAL - PAOLO TONUCCI**           215

2           **"We need to launch an effort as soon as possible**

3   **to ensure we get the 15c3 lock up money and also secure the**

4   **unencumbered box".**

5           **He asks you to coordinate with Berkenfeld on that.**

6   **What did you do?**

7      A. I spoke to Robert Azerad about it. I

8   don't recall speaking to -- when I spoke to

9   Stephen but I am sure I did. He is a lawyer so

10   I presume I am not allowed to discuss what

11   I talked to him about.

12      MR. HUME: You are if he want you to.

13      A. Is that right?

14      MR. HUME: Yes.

15      A. I am sure I talked to him about what he

16   could help with so for me this was sort of largely

17   a legal question.

18      **Q. You respond: "Agreed. Will use Robert**

19   **for this". Then someone comes back to you and**

20   **says:**

21           **"You need to be close to it. If we don't succeed**

22   **you and I are toast, despite all our heroics."**

23           **Did you discuss this e-mail with Mr. Lowitt?**

24      A. I didn't.

25      **Q. Did you have an understanding what he**

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2      MR. HUME: Same objection.

3      A. It is consistent really with what Martin

4   is saying here. Martin would be more of the

5   expert on this than I would, and I would defer to

6   him in terms of what was required.

7      **Q. The 15c3, you have explained how there**

8   **was a billion in cash, there was also 769 in**

9   **securities, and ultimately the agreement was to**

10   **transfer only the 769 in securities. Is that your**

11   **understanding?**

12      A. That is my understanding

13      **Q. Do you have any -- did you hear how that**

14   **final agreement came about?**

15      MR. HUME: Objection, lacks foundation

16   and calls for speculation. The witness has said

17   he was not a negotiator of the terms of the deal.

18      A. No, I mean I was not really privy to the

19   final decision.

20      **Q. Did anyone ever tell you how that final**

21   **decision came about?**

22      MR. HUME: Same objection. If the

23   someone was a lawyer then make sure that they are

24   waiving the privilege.

25      A. I think if anything it would have been



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1           HIGHLY CONFIDENTIAL - PAOLO TONUCCI           218

2     one of the Weil lawyers that would have told me.

3     **Q. Did you have any discussions with**

4     **Mr. Lowitt about how the final decision was made?**

5     A   I don't recall, no.

6     MR HUME. Are you intending to finish

7     today? You only have three minutes until

8     2 o'clock.

9     MR. MAGUIRE : I am not going to finish

10    in three minutes. I think we are going to go

11    a bit beyond that. It might actually be feasible

12    but definitely not within the next three minutes

13    or probably the next 30 minutes.

14    MR. HUME: Do the Creditors Committee

15    still expect to have questions?

16    MR. BUNTING: 45 minutes estimate. I

17    think realistically, if you need to go today,

18    rather than try and compress into the time you

19    don't have an hour and a quarter, on the basis of

20    the commitment that you have made that you be

21    available at a time approximate to the Claxton

22    deposition in London

23    MR. HUME: That would seem to be

24    a convenient time for those of us coming over from

25    the US

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2     substituting, but we will work that out.

3     MR. BUNTING: We will probably have the

4     same arrangement as today with Erica on the phone

5     and myself in person.

6     MR HUME: So we will agree to leave the

7     deposition open on that basis.

8     MR MAGUIRE: That is fine.

9     MR. TAMBE: Thank you.

10    (Deposition concluded for the day at 2:00 pm )

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2     MR. BUNTING: As long as we don't get

3     into an argument about getting time then that is

4     fine by us

5     THE WITNESS: My only concern is that we

6     don't have another very extended, unnecessarily

7     extended session, but I am happy to within reason

8     of course

9     MR. HUME: With the understanding that

10    it will not be a full day, it will be something to

11    accommodate the time, roughly half an hour,

12    roughly 45 minutes, maybe a little bit more time

13    but not a full day, a couple of hours, I think we

14    can make the commitment, and I believe the witness

15    will be around in London that week, perhaps on the

16    3rd.

17    THE WITNESS: Yes.

18    MR. HUME: You can check your calendar

19    to confirm 100 percent. We can tentatively plan

20    for perhaps the afternoon or the morning of the

21    3rd

22    MR BUNTING: That is good for us.

23    MR. MAGUIRE : We may have to make

24    arrangements, not sure I can make it back,

25    arrangements either by phone or somebody

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4           **CERTIFICATE OF DEPONENT**

5

6     I, Paolo Tonucci, hereby certify that I have read

7     the foregoing pages, numbered 1 through 223, of my

8     deposition of testimony taken in these proceedings

9     on Friday, 14 August 2009, and, with the exception

10    of the changes listed on the next page and/or

11    corrections, if any, find them to be a true and

12    accurate transcription thereof.

13

14    Signed: .....

15    Name: Paolo Tonucci

16    Date: .. ...

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1	HIGHLY CONFIDENTIAL - PAOLO TONUCCI	1	HIGHLY CONFIDENTIAL - PAOLO TONUCCI
2	CERTIFICATE OF COURT REPORTER	2	
3		3	E R R A T A
4	I, AILSA WILLIAMS, an Accredited LiveNote Reporter	4	Deposition of Paolo Tonucci
5	for TSG Reporting, hereby certify that the	5	Page/Line No. Description Reason for
6	testimony of the witness Paolo Tonucci in the	6	change
7	foregoing transcript, numbered pages 1 through	7	
8	223, taken on Friday, 14 August 2009 was recorded	8	
9	by me in machine shorthand and was thereafter	9	
10	transcribed by me; and that the foregoing	10	
11	transcript is a true and accurate verbatim record	11	
12	of the said testimony.	12	
13		13	
14	I further certify that I am not a relative,	14	
15	employee, counsel or financially involved with any	15	
16	of the parties to the within cause, nor am I an	16	
17	employee or relative of any counsel for the	17	
18	parties, nor am I in any way interested in the	18	
19	outcome of the within cause.	19	
20		20	
21		21	
22	Signed: .....	22	
23	AILSA WILLIAMS	23	Signed. ....
24	Dated: August 14,2009	24	Name: Paolo Tonucci
25		25	Date: .....